**LEFT IN THE DARK: SEEKING INFORMATION ON PUBLIC FINANCIAL TRANSFERS TO ESKOM AND OTHER STATE-OWNED ENTERPRISES**

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South Africa topped the rankings of the Open Budget Index (OBI) 2010, outperforming the other 93 developed and developing countries assessed on whether their government provides public access to timely, comprehensive information on their national budgets and opportunities to participate in throughout the budget process. South Africa has also been cited as a model for maintaining fiscal discipline, in part, by introducing medium term expenditure frameworks and reforming the classification of revenue and expenditure.

Such excellent performance on measures of budget transparency that evaluate performance at the national and provincial level does not mean that there is no room for improvement. In South Africa's case, important shifts in the government's development strategy pose new challenges to its commitment to open and accountable budget systems and processes.

In the last four years the South African government has made available over $34.29 billion (R250 billion) in public funds to government-owned public enterprises.[1] Access to these funds came in the form of cash transfers, loans, and loan guarantees. Despite the fact that this amount represents a staggering 12 percent of South Africa's annual GDP, citizens have little way of knowing how this money is being used, or how it is being accounted for.

Question 37 in the Open Budget Survey 2010 questionnaire asks: "Does the executive's budget or any supporting budget documentation present information for at least the budget year on transfers to public corporations?" South Africa receives an "A" on this question because it provides "detailed programme information on transfers to public corporations under each administrative classification." This answer indicates that the public has access to information about the bulk of transfers to public enterprises, sometimes also referred to as "parastatals."

However, South Africa's budget documents provide very little detailed information about what happens to these funds once they are transferred out of the national fiscus, and the documents released by the parastatals receiving the funds do even less to fill this void. One would expect that these transfers would be held to the same standards of transparency as the rest of public spending. Yet, we know very little about why these transfers are made, what they are spent on, or whether they are spent at all. Aside from what can be gleaned from public enterprises' annual reports, there is essentially no information on the funds transferred to these entities that is routinely made available to the public. This means that the public has almost no ability to hold these institutions, and the government, accountable for the use of a vast sum of public funds.

Public enterprises in South African have typically developed by following one of two paths. Some have purely historical roots in public service but now operate in competitive market, and others have been established by the government to serve the public good, provide services not offered by the private sector, or regulate the private sector. Two in the first category include Eskom, which was created to supply electricity to government buildings, railways, and harbours but expanded into industrial and domestic markets in the early 20th century; and South African Airways, which was established initially to speed up deliveries of mail but gradually began to take passengers. Both Eskom and SAA now compete with private companies.

In the second category are such entities as the Land Bank, which offers finance to farmers who would not be able to access funds from private financial markets, and the National Homebuilders Registration Council, which regulates the home construction industry. One of the major challenges for public entities is to try to achieve two seemingly incompatible goals — fulfill the long-term strategic goals of government and remain commercially viable.

The South African government continues to support public enterprises for both economic and political reasons. For example, Eskom, which supplies 95 percent of South Africa's electricity, cannot be allowed to fail because of the catastrophic effect this would have on the economy and society more generally. Likewise, the collapse of the Land Bank would have a damaging effect on agricultural development. Public enterprises also receive money for political reasons related to issues of national pride. South African Airways has effectively been bankrupt for years but is bailed out year after year with public money because it is the national carrier.[2]

The public funds transferred to these entities should be examined within a context in which many of them are battling to survive in highly competitive environments, while at the same time undergoing institutional change as part of the government's post-apartheid transformation agenda. This agenda is often only one part of wider turnaround strategies that a number of public entities are pursuing to move toward financial independence from the government.

The growth in transfers to public entities has had the net effect of making the information that is available to the public about government revenue and expenditure incomplete. While the OBI 2010 score may be high, the portion of public sector activities that it evaluates to is shrinking. If the South Africa's level of budget transparency is to be stable or improved, more and better information needs to be made publicly available about the use of public funds by public enterprises.

## TYPES OF PUBLIC ENTERPRISES

The South African Treasury defines public enterprises according to their business orientation and level of autonomy from government.[3] Schedule 1 public enterprises are Constitutional institutions, such as the Public Protector, which investigates alleged improper conduct by organs of the state. Schedule 2 enterprises are major public enterprises that are intended to generate profits; these have the most autonomy from government, operate in competitive markets, and are run like businesses. Eskom is a schedule 2 public enterprise. There are four types of Schedule 3 public enterprises:

- Schedule 3B and 3D enterprises, referred to as "government business enterprises," generate income but may be either substantially self funded or substantially government funded. They have less autonomy than Schedule 2 enterprises, although they are still run like businesses. Sentech, which provides telecommunications infrastructure, is an example of a Schedule 3B enterprise.
- Schedule 3A and 3C enterprises are normally extensions of a government department and have a mandate to fulfill a specific economic or social responsibility. They rely on

government funding and have the least autonomy.[4] An example of this type of enterprise is the National Homebuilders Registration Council.

Each public enterprise has at least one governing executive authority to oversee performance, which is the government department within which the enterprises' mandate falls.[5] For example, the South African Broadcasting Company's executive authority is the Department of Communications. Some public enterprises have more than one executive authority. Eskom, for example, has two executive authorities, the Departments of Public Enterprises and the Department of Minerals and Energy, both of which play a role in ensuring Eskom is managed effectively.

***ESKOM***
**Schedule 2: Departments of Public Enterprise and Minerals and Energy**

After a lack of investments in necessary infrastructure caused significant power outages in South African in 2007- 2008, Eskom announced that it was embarking on a $47 billion (R343 billion) five-year capital expenditure program [part of a $206 billion (R1.5 trillion), 17-year plan to double electricity capacity].[6] While state-owned enterprises like Eskom are supposed to be self-funding, the government announced in early 2008 that it was lending Eskom $8.23 billion (R60 billion) to assist with this capital expenditure program.[7] Two key issues seem to have prompted the government's decision:

1. the need to try and minimize tariff increases as a means by which to raise funds because they are both politically unpopular and inflationary, and
2. the drop in Eskom's international credit rating, making it difficult to raise funds internationally, except at higher interest rates.[8]

The loan was initially to be paid out to Eskom over a five-year period. However, in July 2008 the Treasury announced that it would be paid out over three years — $1.37 billion (R10 billion) in 2008-09, $4.11 billion (R30 billion) in 2009-10, and the remaining $2.74 billion (R20 billion) in 2010-11. The Treasury indicated the loan payments had been pushed forward to ease the pressure to increase tariffs and maintain Eskom's credit rating.[9]

The loan was made under section 11 of the Public Finance Management Act (FPMA), which governs the National Revenue Fund (NRF) and allows for withdrawals to be made via Acts of Parliament. The Eskom Subordinated Loan Special Appropriation Act indicates that the loan is "subordinate to other debts of Eskom."[10] This means that if Eskom were in a position where it was unable to pay the interest on or retire loans completely, the government loan would be paid only after all private loans to Eskom. According to the Treasury, by making the loan subordinated it will be treated favourably as equity by debt-rating agencies.[11] The Act provides for a 30-year repayment period at market-based interest rates, but only when Eskom is "in a sufficiently sound financial position" to be able to make these payments.[12]

In terms of reporting against the loan, the Treasury indicated that both it and the Department of Public Enterprises would monitor the loan, requiring Eskom to provide quarterly reports to both departments.[13] A concerted effort was made to access the full terms and conditions of this loan. The Treasury's Assets and Liabilities section was approached directly, and, after a long and protracted exchange of emails, the Treasury stated that the terms and conditions were not available to the public. A further attempt was made to source the document via the Parliament. All members of both the Finance Committee and Public Enterprises Committee were contacted to see if they had the document. While few members responded, those who did indicated that they did not have the terms and conditions. Finally, a personal contact, a member of both the

Committee on Public Enterprises and Energy, was asked to try and procure the terms and conditions. He was unable to do so.

In early November 2008 Eskom secured a 20-year $500 million (R3.65 billion) loan from the African Development Bank.[14] In addition, the Treasury announced in February 2009 that it was underwriting Eskom's current debt of $3.57 billion (R26 billion) and would underwrite a further $20.1 billion (R150 billion) in new local and foreign debt over a five-year period. The Treasury indicated that, if required, it would repay Eskom's debts, or make interest payments on Eskom's behalf, until such time as it could meet its repayment commitments. The specific details of the agreement between Eskom and the government are publicly available, as are the specific details of any agreement signed between potential creditors and the government.[15]

The government's decision to guarantee Eskom's loans resulted in an improvement in Eskom's credit rating in June 2009.[16] In the same month, Eskom indicated that despite the government's efforts, it expected to have funding shortfalls in upcoming years because of its capital expenditure program. In August 2009 Eskom reported an annual loss of $1.33 billion (R9.7 billion) for the year to March and indicated that it would have to stop or delay its expansion program if additional funds could not be sourced.[17] In an attempt to address these funding shortfalls, Eskom approached the national electricity regulator in October 2009 and asked it to approve a 45 percent per year electricity tariff increase for the next three years. Eskom's CEO noted at that time that even if these tariff increases were granted, Eskom would still face a R30 billion "cash shortfall" over the next three years.[18]

In late November 2009 Eskom announced that it had secured a second loan from the African Development Bank, this time for $2.74 billion (R20 billion); while in early December 2009 a World Bank official announced that the Bank would speed up a $3.75 billion (R27.3 billion) loan, which was to be made available to Eskom in the first half of 2010.[19] On 11 December 2009 Eskom indicated that it had secured further loans totalling $1.07 billion (R7.8 billion) from three international and four South African banks. The loans, which are repayable over a 12-year period, are guaranteed by the South African government.[20] In January 2010 the government announced that it was considering selling government assets to try and raise more money for Eskom.[21]

***The Land Bank of South Africa***
**Schedule 2: Ministry of Finance**

In July 2008 the Land Bank was transferred from the Minister for Agriculture and Land Affairs to the Minister for Finance.[22] This decision was taken after four different forensic audits of the Bank revealed that six years of mismanagement and corruption had resulted in four years of annual losses.[23] These losses occurred even with $617.3 million (R4.5 billion) in loan guarantees from the Department of Agriculture and Land Affairs between 2005 and 2007, and a cash injection of $96 million (R700 million) during 2007.[24] These funds, particularly those made available in 2007-08, were said to be necessary to strengthen the Bank's turnaround strategy.[25] Notwithstanding these funds, South Africa's Finance Minister announced in June 2009 that a further $480 million (R3.5 billion) worth of loan guarantees were to be issued to the Bank over a period of three years. These guarantees were subject to a number of conditions, including requiring the Land Bank to:

1. maintain a capital adequacy ratio that does not fall below 20 percent,
2. provide the Treasury with quarterly progress reports on the Bank's turnaround strategy; and
3. provide updates to the Treasury on its development indicators as they relate to developmental policy.[26, 27]

The Finance Minister announced that these guarantees would "ensure that the Land Bank is financially sustainable."[28] In August 2009 the Finance Minister declared that the Bank was now "out of ICU;" however, less than two months later he stated that the Bank was to receive a further $137 million (R1 billion) in direct capital transfers to assist with its turnaround strategy.[29, 30]

### ***Other Public Entities***

**South African Broadcasting Corporation**
Between 2005 and 2008 unconditional transfers of $114 million (R834 million) were made to the national public TV and radio broadcaster.[31] In 2009, amidst reports of mismanagement and corruption, the SABC's acting chief executive stated that the broadcaster needed "a bailout" to be able to meet its mandate.[32] In response, it received a further $63.43 million (R462 million) in unconditional transfers.[33] In addition, the Treasury announced that it had approved a rescue package for the SABC that consisted of 5 years of government credit guarantees valuing $202.06 million (R1.473 billion). The guarantees were made "subject to the development of a detailed project plan by the public broadcaster."[34] The terms and conditions of the guarantees are unknown. However, the Minister for Communications stated that "tight control measures were in place," including the production of regular management reports.[35]

**Development Bank of South Africa**
The DBSA, which funds infrastructure development, received loan guarantees amounting to $88.3 million (R644 million) between 2005 and 2006.[36] The DBSA also has a guaranteed callable capital facility with the government of $658 million (R4.8 billion) if it is ever unable to meet any of its commitments. In July 2009 it was announced that this callable capital facility was set to increase to $2.74 billion (R20 billion).[37] The DBSA has also received direct capital transfers of $129.1 million (R941 million) to help capacitate municipal staff.[38]

**South African Airways**
Between 1999 and 2007 the national airline received a total of $1.17 billion (R8.49 billion) in direct capital transfers from the Treasury, as well as a subordinated loan of $219.5 million (R1.6 billion). In 2008 it received further subordinated loans of $393 million (R2.86 billion), and a cash injection of $102 million (R744 million).[39] In 2009 the airline received a further $220 million (R1.6 billion) cash injection "to support its turnaround strategy."[40] In the 2008-09 financial year, the Treasury also made a capital transfer of $80 million (R585 million) to South African Express, an SAA subsidiary.[41]

**Denel**
The arms company Denel has received direct cash transfers of $480 million (R3.5 billion) since 2005. In addition, the Treasury has paid $65.98 million (R481 million) in indemnity payments related to contracts involving Denel since 2007. In 2009 Denel received a loan guarantee of $254 million (R1.85 billion).[42]

**Pebble Bed Modular Reactor**
The PBMR is a public-private nuclear power company. Since 2005 it has received transfers of just over $1.05 billion (R7.77 billion).[43]

**Nuclear Energy Corporation of South Africa**
NECSA is a public enterprise that promotes research in the field of nuclear energy.[44] Over the course of the last five years, it has received transfers amounting to $276 million (R2.12 billion).[45]

**Alexkor**
Alexkor is a publicly owned diamond mining company, which has received transfer to the value of $58.6 million (R427 million) since 2005-06.[46]

**Broadband Infrastructure Company**
Infraco is a publicly owned communications company. Since its establishment in 2006, it has received $166.4 million (R1.21 billion) in direct capital transfers.[47]

## TRANSFER AND ACCOUNTABILITY REPORTING REQUIREMENTS

The following sections outline the general legislative requirements for the transfer of funds (capital, loans, and guarantees) to public enterprises and present a summary of the accountability and reporting regulations that govern these transfers.

### Capital Transfers, Loans, and Guarantees

Section 213 of the South African Constitution states that all monies received by the South African government must be paid into the NRF, from which funds can only be withdrawn by an appropriation act passed by Parliament.[48] The National Treasury in South Africa is responsible for the NRF and enforcing compliance with Section 213 of the Constitution, and it is the only institution that can withdraw funds from the NRF.[49] Thus the transfer of funds to public enterprises can only happen through a budget appropriation act. This means that capital transfer payments and loans to public enterprises can only be made with the approval of the Parliament. Each appropriation must, therefore, go through a Bill phase and be subject to scrutiny by the Parliamentary Portfolio Committee, before it is debated and voted into an appropriation act by Parliament. With the introduction of the Money Bills Amendment Procedure and Related Matters Act in 2009, the South African Parliament now has the power to amend Money Bills via the Standing Committee on Appropriations.[50]

Section 66(3) (a) of the Public Finance Management Act (PFMA) gives Schedule 2 public enterprises the authority to issue guarantees that bind them to future financial commitments without the permission of the Finance Minister.[51] Despite this power, the Treasury recently confirmed that the guarantees that have been issued for Schedule 2 public enterprises have been issued under section 70 of the PFMA, which allows executive authorities (responsible ministers), with the written permission of the Finance Minister, to issue guarantees on behalf of public enterprises that bind the NRF, rather than the enterprises themselves, to future financial commitments. [52, 53] An executive authority that seeks the Finance Minister's approval to issue a guarantee must provide the Finance Minister with all the information required to decide whether to grant such a guarantee request.[54]

## ACCOUNTABILITY AND REPORTING REQUIREMENTS

### Accountability[55]

Responsibility for oversight of public enterprises rests in the Parliament, the respective executive authority for the public enterprise, the Treasury and the boards of public enterprises.

***Parliament***
Parliamentary oversight of public enterprises occurs through four committees:

1. The Finance Committee reviews the decisions of the Treasury. Thus it plays an important role in reviewing fund transfers and loan guarantees for public enterprises.
2. The Standing Committee on Appropriations is mandated to review all money bills that appear before Parliament, including those that include transfers, loans, and guarantees for public enterprises.
3. The Public Accounts Committee is responsible for reviewing the Auditor-General reports evaluating government departments (including those with governing authority for public enterprises), as well as audits of specific public enterprises.[56] In addition, The Public Accounts Committee reviews the annual financial statements of government departments and public enterprises (all public enterprises must submit their annual reports to the Public Accounts Committee).
4. Each Departmental Portfolio Committee that represents a specific government department is responsible for reviewing its respective department, including any public enterprises for which the department is responsible. Portfolio Committees are more concerned with reviewing nonfinancial information and focus their efforts on evaluating whether public enterprises have delivered on the service delivery commitments they made in their strategic plans.[57]

***Executive***

The executive authority of a public enterprise (the relevant departmental minister) is responsible for ensuring that the enterprise delivers its services effectively and efficiently. The executive authorities' oversight role is "concerned with reviewing, monitoring and overseeing of the affairs, practices, activities, behaviour and conduct of the state owned enterprise."[58] Where public enterprises exist and seek profits in competitive marketplaces, the executive authority, as a shareholder, will also be concerned with its return on investment. This means that executive authorities should take a particular interest in the strategic and business plans of Schedule 2 and Schedule 3B/3D public enterprises.

***National Treasury***

The Treasury is mandated to provide financial oversight over public enterprises by:

- setting reporting guidelines to promote and enforce transparency of revenue, expenditure, assets, and liabilities;
- overseeing funding and borrowing activities;
- controlling the utilisation of contingent liabilities; and
- implementing effective management models.[59]

***Board of Directors***

The mission of the board of directors of a public enterprise is to ensure that it fulfils its mandate in accordance with the objectives of government. The board of directors hold absolute responsibility for the performance of public enterprises; they formulate, monitor, and review corporate strategies and ensure compliance with all applicable laws.[60] In terms of section 49 of the PFMA, a board of directors is also considered the accounting authority and, therefore, is subject to all the financial management provisions in the PFMA and Treasury Regulations as they relate to accounting authorities. The board of directors is made up of members of the executive and those not related to the executive, with the latter in the majority.

**Reporting**

The following section details the reports that public enterprises are expected to produce. In addition, it evaluates the likely availability of such reports.

The Constitution states that all cabinet ministers must provide parliament with "full and regular reports concerning matters under their control."[61] This legal directive is given substance by the PFMA and its associated Treasury Regulations. The following table provides an account of the plans and reports that must to be generated and that should contain information on the financial performance of public enterprises.

| TYPE OF REPORT | INFORMATION REQUIREMENT | FREQUENCY | AVAILABILITY |
|---|---|---|---|
| **Corporate Plan** | • Projections of revenue, expenditure, and borrowing<br>• Asset and liability management<br>• Cash flow projections<br>• Capital expenditure programs<br>• Dividend policies[62] | Annually | The strategic plans of government departments are publicly available. However, because most public enterprises operate within competitive environments, it seems unlikely that Corporate Plans would be publicly available. It is possible that any attempt to use the Promotion of Access to Information Act (PAIA) to gain access to Corporate Plans may be refused in terms of sections 36 or 64, which protect enterprises from having to release commercially sensitive information. |
| **Borrowing Programs** | • A three-year borrowing program (starting in the first year of the corporate plan)<br>• Quarterly reports on the borrowing program that reflect actual borrowing for each quarter, and any updates of the overall borrowing program[63]<br><br>The borrowing program must include:<br><br>• the terms and conditions of any borrowing;<br>• information on proposed domestic and foreign borrowing;<br>• short- and long-term borrowing;<br>• debts guaranteed by the government;<br>• motivations for government guarantees; and<br>• the executive authority's approval of the borrowing program.[64] | Quarterly | These reports are unlikely to be publicly available because presumably they will contain commercially sensitive information relating to loan terms and conditions from private enterprises. Sections 36 or 64 of the PAIA is again likely to be a barrier in accessing these borrowing reports. |
| **Shareholder's Compact** | The Shareholders Compact is an agreement between the relevant executive authority (as shareholder) and the board of directors of the public enterprise "with | Annually | Eskom's Shareholders Compact could not be found on its website. There was no response from Eskom to an email request for this document. There is limited information |

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| | respect to performance expectations and parameters." The compact "describes the relationship between the signatories and identifies the behaviour that would be required on both sides to support effective management and performance." The compact must also "document the mandated key procedures for quarterly reporting to the executive authority in order to facilitate effective performance monitoring, evaluation and corrective action."[65] | | about the compact at http://www.eskom.co.za/annreport09/ar_2009/business_shareholder.htm. |
| **Annual Report** | The accounting authority for a public enterprise must submit an annual report to the Treasury and executive authority which should include:<br><br>• a report on the activities of the public enterprise during the past financial year;<br>• an assessment of the enterprise's actual performance in meeting its strategic objectives and targets;<br>• audited financial statements;<br>• the report of the auditors on its financial statements; and<br>• details of any financial assistance received from the state and commitments made by the state on its behalf.[66]<br><br>The accounting authority must ensure that the Annual Report is tabled in Parliament within one month of receiving the auditor's report on the financial statements.[67] | Annually | Publicly available<br>See, for example, the 2008-09 annual reports of Eskom and the DBSA:<br>http://www.eskom.co.za/annreport08/<br><br>http://www.dbsa.org/DBSA_Fund%20Annual%20Report%202009%20web.pdf<br><br>The 2008-09 annual reports of nine major public enterprises can be found on the Department of Public Enterprises website:<br>http://www.dpe.gov.za/library9_annualreports |
| **Quarterly Reports** | In addition to quarterly reports on borrowing programs, public enterprises must submit quarterly | Quarterly | Similar quarterly performance reports for government departments are regularly attained without resorting to the |

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| | reports on performance. Such reports should evaluate the enterprise's current performance and include information relating to any corrective action that may be necessary to overcome performance problems.[68] | | PAIA. However, commercial interests may make accessing these reports problematic. |
| **Guarantee Report** | At least annually, the responsible executive authority must report on any payments that have been made in regard to any guarantee that has been entered into in terms of section 70 of the PFMA. Such reports must be tabled in Parliament.[69] | Annually | Reports should be tabled in Parliament, so they should be publicly available. |
| **Special Audit Reports** | The Auditor-General can conduct an audit and produce a special report on any public enterprise. Such special reports must be "promptly" tabled in Parliament.[70] In terms of the PFMA, the Auditor-General can also "annually report to Parliament on specific and general findings regarding the accountability of public entities."[71] | As and when produced | Reports should be tabled in Parliament, so they should be publicly available. However, such reports are often not publicly available via Parliament because they may contain potentially litigious findings. Political issues also can keep such special reports from the public eye. |

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| **Eskom** | Conditions attached to the $8.23 billion (R60 billion) Eskom loan require it to provide quarterly reports on the loan to the Treasury and the Department of Public Enterprises. The Eskom Subordinated Loan Special Appropriation Act states that such reports should include information on Eskom's "financial status."[72] This suggests that these reports are in addition to the quarterly performance and borrowing reports. | Quarterly | While this loan is made up entirely of public funds, accessing reports on its use from Eskom may again prove difficult because of issues of commercial confidentiality. |
| **South African Broadcasting Corporation** | The Minister for Communications stated that "tight control measures were in place" in regard to money transferred to the public broadcaster, including the production of regular management reports.[73] | Unknown | SABC also exists within a competitive environment, so accessing these reports may be difficult. |
| **The Land Bank** | The Land Bank must provide the Treasury with quarterly reports on the progress of its turnaround strategy. | Quarterly | These reports should be accessible, as they are performance reports. |

## ACCESS TO INFORMATION ON PUBLIC ENTERPRISES

All of the reports presented in the table would be useful to track the flow of public funds to parastatals and assess the oversight arrangements related to these funds. The most useful reports for tracking funds and performance over extended periods of time and against plans would be the Corporate Plan, the Quarterly Reports, and the Annual Report. By cross-referencing these documents, researchers would be able to track performance (both financial and service delivery) against predetermined performance indicators and spending targets.

None of this information is as accessible and comprehensive as the information presented for the rest of the government's financial transactions. But even so, of all the documents listed above, the only ones which are automatically available to the public are Annual Reports. All the others must be requested either from the public entities themselves, the Department of Public Enterprises, the respective executive departments, or the Treasury. It is likely that barriers will be faced in trying to gain access to these other documents because most of the public entities exist within competitive business environments. Researchers may have to resort to the PAIA to gain access to these documents. This could result in court action, which could be unsuccessful if the court finds that the release of such information is prejudicial to the best interests of the public entities.

It also should be recognised that despite constitutional imperatives for access to information held by the state, a culture of secrecy and suspicion still permeates some areas of government in South Africa. Therefore, despite substantial progress being made since the end of apartheid, requests for information held by the state can sometimes still result in unnecessarily prolonged and frustrating delays.

Approaching the Treasury for such reports may prove easier because it appears that there is a certain amount of tension between the Treasury and public entities at the moment ineffective financial management of the public enterprises. There appears to be a growing frustration within Treasury that public entities are not sufficiently oriented toward operational efficiency and financial stability. It may be, and this is purely speculative, that the Treasury could see some advantage in this research, as it may expose some of these issues to a wider audience.

In the last analysis public enterprises should be held to the same standards of transparency as the rest of government spending. This will mean that more of it should be publicly available. And what is publicly available should be presented in accessible manner.

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[1] $1 = R7.29.

[2] This is not to imply that there are not other concerns, such as the loss of jobs, which would result if SAA were to go bankrupt.

[3] As defined by the Minister of Finance, "PFMA Schedule (1)(2)(3A)(3B)(3C)(3D)," 31 March 2009, www.treasury.gov.za.

[4] Office of the Auditor-General, www.agsa.co.za/.../Section%204%20**Public**%20**entities**%20p27-41.pdf.

[5] "Governance Oversight Role Over State Owned Entities (SOEs)," National Treasury, 22 Nov. 2005, section 4.1.1.

[6] The capital expansion costs are split between generation (73%), transmission (12%) and distribution (10%) and will add 5 800 megawatts to existing capacity.

[7] According to the Treasury, the amount of support the Government could offer to Eskom was limited to R60 billion because of the current fiscal framework over the Medium Term Expenditure Framework (MTEF) period. Treasury presentation to Finance Committee, "Eskom Subordinated Special Appropriations Bill," 22 Oct 2008, www.pmg.org.za/report/20081022-address-minister-finance-medium-term-budget-policy-statement-delibera.

[8] "Debt Agencies Hold Out on Eskom", 22 Feb. 2008, http://electricitysouthafrica.co.za/archives/926.

[9] Treasury presentation to Finance Committee, "Eskom Subordinated Special Appropriations Bill," 22 Oct 2008, www.pmg.org.za/report/20081022-address-minister-finance-medium-term-budget-policy-statement-delibera. Treasury's decision to bring forward the loan was clearly prompted in part by the National Energy Regulator of South Africa's decision in June to approve a 27.5% tariff increase as opposed to the 60% increase requested by

Eskom. "Speed up Loan to Eskom, Regulator tells State," 19 June 2008, www.electricitysouthafrica.co.za/archives/1400.
[10] Eskom Subordinated Loan Special Appropriation Act, section 1 (3)(a).
[11] Treasury presentation to Finance Committee, "Eskom Subordinated Special Appropriations Bill," 22 Oct 2008, www.pmg.org.za/report/20081022-address-minister-finance-medium-term-budget-policy-statement-delibera
[12] Eskom Subordinated Loan Special Appropriation Act, section 1 (3)(b)(ii). Treasury presentation to Finance Committee, "Eskom Subordinated Special Appropriations Bill", 22 Oct 2008, www.pmg.org.za/report/20081022-address-minister-finance-medium-term-budget-policy-statement-delibera
[13] Email correspondence with B. Kwele, National Treasury, 23 Nov. 2009.
[14] "Eskom Secures $500m AFDB Loan," 11 Nov. 2008, www.southafrica.info/business/economy/infrastructure/eskom-111108.htm.
[15] http://www.eskom.co.za/content/GUARANTEE%20FRAMEWORK%20AGREEMENT%20Signed.pdf and http://www.eskom.co.za/content/DMTN%20Guarantee%20Signed.pdf
[16] "Eskom Gets Thumbs Up," 11 June 2009, http://electricitysouthafrica.co.za/archives/1712.
[17] "Lower Fees Will Lead to Funding Shortfall," 2 Dec. 2009, http://www.br.co.za/index.php?fArticleId=5270245
[18] "Eskom Seeks 45% a Year Electricity Tariff Hike,"13 Oct. 2009, http://www.techcentral.co.za/eskom-seeks-45-a-year-electricity-tariff-hike/10571/.
[19] "Eskom's Expansion Plan Get R20 billion Injection," 27 Nov. 2009, www.businessday.co.za/Articles/Content.aspx?id=88228. "World Bank to Expedite $3.75 bn S. Africa Eskom Loan," http://www.timeslive.co.za/business/article218288.ece.
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[48] South African Constitution, section 213(1) and 213(2).
[49] PFMA, section 11(1) and 15(1)(a).
[50] Money Bills Amendment Procedure and Related Matters Act, 2009, sections 10 and 13.
[51] Schedule 3 public enterprises much seek the permission of the Finance Minister before issuing any guarantees which bind them to any future financial commitments. PFMA, section 66(3)(b).
[52] Answer to Parliamentary Question, 935, 21 Aug. 2009, http://www.pmg.org.za/node/18101.
[53] PFMA, section 70(1)(a). The difference between a guarantee with binds a public enterprise and one which binds the Treasury appears to be somewhat of a moot point in circumstances where the state is the sole shareholder of a public enterprise.
[54] PFMA, section 70(3).
[55] The following section draws heavily on Governance Oversight Role over State Owned Entities (SOEs)," National Treasury, 22 Nov. 2005.
[56] Section 58 of the PFMA notes that public enterprises may be audited by external auditors, with the Auditor-General's permission.
[57] This is not to say that Portfolio Committees should not also interest themselves in financial matters.
[58] Governance Oversight Role over State Owned Entities (SOEs)," National Treasury, 22 Nov. 2005, section 4.1.1.
[59] ibid, section 4.2.4.
[60] ibid, section 6.4.2.
[61] Section 92(3).
[62] Treasury Regulations, 2005, section 29.1.1(g). The Corporate Plan is essentially a Strategic Plan.
[63] ibid, section 29.1.3.
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[65] Governance Oversight Role over State Owned Entities (SOEs)," National Treasury, 22 Nov. 2005, section 4.2.2.
[66] PFMA, section 55(1)(d) and (2)(b)(iv), and Treasury Regulations, 28.2.2.
[67] PFMA, section 65(1)(a).
[68] Treasury Regulations, 2005, sections 29.3.1 and 30.2.
[69] PFMA, section 70(4).
[70] PFMA, section 62(1)(2) and (3).
[71] PFMA, section 62(4)(b).
[72] The Eskom Subordinated Loan Special Appropriation Act states that "the loan agreement must provide for such regular reporting by Eskom on its financial status and on the implementation of its investment plan as required by the National Treasury." Eskom Subordinated Loan Special Appropriation Act No. 31653 2008, section 1(3)(c).
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