2027 POLICY BRIEF

POLICY BRIEF NO. 4

Budget & Fiscal Federalism Series

FINANCIAL AND FISCAL COMMISSION

For an Equitable Sharing of National Revenue

Government guarantees and fiscal risk management in South Africa

Executive Summary

Despite the existence of legislative and policy provisions that mandate the disclosure and monitoring of government guarantees, reporting practices remain fragmented, with many guarantees recorded off-budget and outside of the fiscal framework. As a result, budgets rarely make provisions to account for the possible costs of guarantees that are called upon; and there is limited future preparation on how to mobilise additional funding or reconfigure expenditure should these contingent liabilities materialise. This lack of integration weakens fiscal transparency and makes it more difficult to assess the government's exposure to potential contingent liabilities – complicating debt sustainability assessment, as liabilities are considered in fiscal risk analysis. Moreover, the criteria utilised in issuing guarantees and bailouts to SOEs remains of concern, particularly that guarantees are repeatedly issued to entities that remain unsustainable.

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FOCUS AREA: Fiscal risk management & contingent liabilities

RELATED: Constitution Sections 213-218; PFMA Section 70; National Treasury Regulation 13

THE FINANCIAL AND FISCAL COMMISSION

The Financial and Fiscal Commission is a constitutional institution that makes recommendations to organs of state on financial and fiscal matters. As an institution created in the Constitution of the Republic of South Africa, it is an independent juristic person subject only to the Constitution itself, the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997) (as amended) and relevant legislative prescripts. It may perform its functions on its own initiative or at the request of an organ of state.

The vision of the Commission is to provide influential advice for equitable, efficient and sustainable intergovernmental fiscal relations between national, provincial and local spheres of government. This relates to the equitable division of government revenue among three spheres of government and to the related service delivery of public services to South Africans.

Through focused research, the Commission aims to provide proactive, expert and independent advice on promoting the intergovernmental fiscal relations system using evidence-based policy analysis to ensure the realisation of constitutional values. The Commission reports directly to both Parliament and the provincial legislatures, who hold government institutions to account. Government must respond to the Commission's recommendations and the extent to which they will be implemented at the tabling of the annual national budget in February each year.

The Commission consists of commissioners appointed by the President: the Chairperson and Deputy Chairperson, three representatives of provinces, two representatives of organised local government and two other persons. The Commission pledges its commitment to the betterment of South Africa and South Africans in the execution of its duties.

Background

In South Africa, the framework governing guarantees is embedded in the Constitution of 1996, the Public Finance Management Act (PFMA) of 1999, and National Treasury regulations and practice notes. The Constitution sets up a comprehensive framework for public finances, including the governing of government guarantees, while the PFMA serves as the foundation for financial governance – providing a legislative framework for the effective, transparent, and accountable management of public resources. The National Treasury regulations, issued under the PFMA, outline the specific governance and procedural criteria for issuing government guarantees. In terms of accounting and budgeting, guarantees are accounted for through the cash-based accounting approach: government guarantees and contingent liabilities are only recognised as expenditure when they occur, and only then are appropriations made to meet those costs.

When guarantees materialise, as has often been the case with Eskom and other large SOEs such as Denel and South African Airways, the resulting liabilities are absorbed by the state without prior alignment with the budget planning process. This practice diminishes the credibility of the budget process and poses long-term sustainability risks to the fiscus. Moreover, ensuring that the administration of government guarantees is within a comprehensive and uniformly structured policy framework will establish that guarantees are issued within the prescribed statutory regulations and on a uniform criteria basis, without any politically driven motives.

> ***Strengthening the integration of government guarantees in the primary budget documents and fiscal framework, in a consistent and transparent manner, is essential for aligning public finance management with constitutional principles and long-term economic stability.***

Research Findings

1. Case Study Insights on Managing High-Risk Guarantees

The study undertook a case study analysis of countries demonstrating best practices in managing guarantees with a high likelihood of being called, as well as countries whose accounting approaches are broadly comparable to those of South Africa. The key insights arising from this analysis are as follows:

I. Early recognition of probable and measurable risks, through provisions, strengthens fiscal sustainability by anticipating future obligations.

II. Disclosure alone is insufficient; without integration into the budget process, partial transparency does not fully mitigate fiscal risk.

III. Embedding guarantees within fiscal frameworks, forecasts, and strategy documents represents international best practice for risk management.

IV. Applying clear probability and measurability criteria for provisioning enhances the credibility and consistency of financial reporting.

V. Institutionalised reporting mechanisms are essential for systematically identifying, assessing, and communicating fiscal risks; while the use of ceilings or fiscal rules helps contain the accumulation of contingent liabilities and limits overall exposure.

VI. Cash-based budgeting systems are inherently reactive, as fiscal costs are only recognised when guarantees are called, unless supplemented by strong disclosure and risk frameworks.

2. Assessment of Legislative and Regulatory Frameworks

The section below examines legislative and regulatory frameworks governing government guarantees.

The Constitution of the Republic of South Africa (1996)

Section 215 (1) of the Constitution sets the principle that all budgets and budgetary processes must be transparent and accountable, and that government must ensure effective management of debt and the public sector, among other things. Guarantees significantly contribute to public contingent debt, and according to **section 215(1)**, their issuance should not jeopardise debt sustainability. However, it is key to note that the transparency of the budget in helping manage debt sustainability is constantly under scrutiny, as the National Treasury only notes these commitments in annexure Table 11 of the Budget Review – concealing the real impact of these commitments on debt and fiscal sustainability, and overall the country's exposure to debt.

The limited transparency and incomplete disclosure of government guarantees directly undermine the principles embedded in **Section 214 (1)–(2)** of the Constitution, particularly in relation to the role of the Financial and Fiscal Commission (FFC). **Section 214 (1)–(2)** requires that an Act of Parliament providing for the equitable division of nationally raised revenue be enacted after consultation with the Financial and Fiscal Commission, and with due consideration of the Commission's recommendations, taking into account the national interest, national debt, and other national obligations. However, when guarantees, which constitute a significant portion of contingent liabilities, are not fully integrated into core fiscal risk reporting, the Commission is constrained in its ability to assess the true extent of government financial obligations. This weakens the Commission's capacity to provide informed and credible recommendations, as the fiscal framework upon which revenue-sharing decisions are based becomes incomplete and potentially misleading.

Public Finance Management Act (1999)

The PFMA in **section 70 (1)** authorises the Minister of Finance to issue guarantees for specific individual cases or a category of cases, on conditions determined and approved by the Minister. This section provides limited detail regarding the criteria and methodology used for fiscal risk assessment before issuing guarantees, and does not set explicit standards for risk assessment, financial viability tests, or future fiscal sustainability evaluations. In practice, this means the risk-assessment framework is left to National Treasury guidelines rather than being embedded in the primary legislation. It is also notable that **section 70** does not establish a ceiling for aggregate guarantee exposure: the Act only grants the Minister the power to set conditions attached to guarantees issued, but does not limit total exposure or guarantee-to-GDP ratios – allowing significant contingent liabilities to accumulate over time.

The PFMA is not clear on the post-issuance monitoring of guarantees. Although **section 40** requires public entities to report on particulars including contingent liabilities, it does not establish consistent guarantee reporting requirements, nor does it require proactive disclosure on guarantee performance, default probability, or early warning indicators. Consequently, monitoring takes on a reactive approach rather than a preventive one. Finally, the PFMA does not clearly provide for transparent reporting of guarantee risks: the Act requires disclosure of contingent liabilities but does not require real-time disclosure of guarantee utilisation, guarantee calls, the rearranging of guarantee terms, or the forecasting of possible fiscal risks. This ambiguity affects Parliament's oversight function and weakens accountability.

National Treasury Regulations (2000)

Regulation 13.1.1 states that institutions may not provide guarantees without approval from the appropriate treasury. However, this regulation lacks any formal criteria or minimum standards of analysis to guide an evaluator in deciding on a guarantee application, meaning guarantees could be awarded with little to no consideration of default risk or overall fiscal implications. Under **Regulation 13.1.4**, public entities are obliged to report all contingent liabilities within their knowledge, including government guarantees. However, there are no requirements for these reports to include standard metrics such as guarantee utilisation, compliance with guarantee terms, risk grade, or financial conditions. This reporting deficit is further exacerbated by the siloed nature of these reports, which contributes to a limited view of the risk exposure that guarantees present.

3. Guarantee Risk Matrix and Likelihood of Provision Recognition

The matrix results indicate that guarantees and bailouts to Eskom, SAA, Land Bank, SAPO, Denel, and SA Express carry significant fiscal risk due to their exposure levels and frequency. Based on the matrix, these guarantees should be recognised as provisions in future – as evidenced by the current Eskom debt relief agreement. However, it is also notable that, over the same period, risk associated with guarantees to SANRAL and Transnet was moderately contained, although still increasing, while entities such as SABC and DBSA remained stable due to low cumulative support and frequency of support.

Table 1: Government guarantee risk matrix

Entity	Cumulative Support	Frequency of Support	Fiscal Exposure Level	Likelihood of Guarantee Call	Risk Category
Eskom	181,550	High (5 Years)	Very High	Very High	Critical
SAA	48,400	High (6 Years)	High	High	Critical
SANRAL	23,736	Low (1 Year)	Moderate	Moderate	Elevated
Sasria	22,000	Low (1 Year)	Moderate	Moderate	Elevated
Land Bank	13,563	High (5 Years)	Moderate	High	Severe
SAPO	10,392	High (6 Years)	Moderate	High	Severe
Denel	8,995	Moderate (4 Years)	Moderate	High	Severe
DBSA	7,912	Moderate (4 Years)	Low	Moderate	Stable
Transnet	5,837	Low (1 Year)	Moderate	Moderate	Elevated
SA Express	3,296	Moderate (4 Years)	Low	High	Severe
SABC	3,200	Low (1 Year)	Low	Low	Stable
ACSA	2,325	Low (1 Year)	Low	Low	Stable

Critical Elevated Severe Stable

Source: National Treasury (2023) and Financial and Fiscal Commission's calculations

The Commission Recommends That:

1. The National Treasury should establish and implement a clear, consistent, and comprehensive policy framework governing government guarantees, thereby giving effect to constitutional obligations under Sections 213(1)-(2), 214(2), 215(1) and 218, and reinforcing Parliament's mandate to exercise oversight and accountability over contingent fiscal commitments.

2. The National Treasury should ensure that the devised guarantee framework is aligned with international best practice through the introduction of explicit guarantee ceilings, such as guarantee-to-GDP thresholds, and reserves or contingency funds, to prevent unchecked growth of contingent liabilities and mitigate fiscal risks.

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