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Dear Mr Daniel Greenberg CB

16 November 2021

Many thanks for the 11 November 2021 briefing to the SADC PF and its technical working group on the model PFM Law. It's encouraging to see the progress being made and the level of participation and interest in the drafting process. I undertook to provide written suggestions on certain aspects of the latest iteration of the model law.

Below please find these suggestions.

Yours faithfully



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**Feedback on the latest iteration of the draft model PFM law as developed and circulated by Daniel Greenberg CB on 11 November 2021.**

- 1) Within section 6 dealing with General definitions it is proposed that the definition of “public authority” under the following clauses:

- (iii) any statutory corporation or any other body created by this Act or any other law;
- (iv) the holder of any office or position created by this Act or any other law;

be revised to read as follows:

- (iii) any statutory corporation or any other body created by this Act or any other law **where they are exercising a public power or performing a public function in terms of legislation;**
- (iv) the holder of any office or position created by this Act or any other law **where they are exercising a public power or performing a public function in terms of legislation;**

- 2) Within section 9(1)(a) it is proposed that the words “to optimise public revenue,” be revised to read as “to optimise public revenue **and expenditure,**”
- 3) I was unable to locate sections in the current draft Model PFM law that define certain forms of inappropriate expenditure and what corrective action should follow should such forms of expenditure occur. While section 65 deals with unauthorised expenditure there are currently no sections defining for instance:

fruitless and wasteful expenditure;<sup>1</sup>  
irregular expenditure;<sup>2</sup>

I appreciate Mr Greenberg directing my attention during last week’s briefing to section 102 which deals with the **Misuse of public funds** and section 103 dealing with **Recovery**. While both sections are to be welcomed, the former section is with respect inadequate in that it merely notes that “*a public official misuses public funds in the official contravenes a provision of this Act, or of regulations made under this Act, in respect of the treatment of public funds.*” If the draft Model PFM only defines unauthorised expenditure and does not contain definitions of fruitless and wasteful expenditure and irregular expenditure then such forms of expenditure will not be subject to the Misuse of public funds section nor the Recovery section. I have therefore made suggestions below relating to these forms of expenditure over and above suggesting (see the footnotes below) that definitions of both types of expenditure be included.

- 4) It appears upon the writer’s reading of section 21(1) and 21(2) that both sections are not applicable to public authorities other than a Ministry. It is proposed that both sections apply to such public authorities.

- 5) It is proposed that section 21(3) be revised to read as follows:

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<sup>1</sup> In South Africa, fruitless and wasteful expenditure is defined in its PFM law as: “expenditure which was made in vain and would have been avoided had reasonable care been exercised”.

<sup>2</sup> In South Africa, irregular expenditure is defined in its PFM law as: “expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including – (a) this Act; or....”

“The accounting officer of a public authority shall establish and maintain adequate systems of governance and financial management to ensure that –

- (a) the public financial management principles are applied;
- (b) officials of the public authority demonstrate application of the public financial management values;
- (c) the public authority conforms to standards expected by Parliament; and
- (d) the public authority functions within the overall financial framework set by the Finance Ministry.
- (e) effective, efficient and transparent systems of financial and risk management and internal control are maintained.
- (f) there is effective, efficient, economical and transparent use of the resources of the public authority.
- (g) complete and proper records of the financial affairs of the public authority are kept and retained in accordance with any prescribed norms and standards.
- (h) there is compliance with any tax, levy, duty, pension and audit commitments as may be required by legislation;
- (i) there is settlement of contractual obligations and payment of all money owing, including inter-governmental claims, within the prescribed or agreed period;
- (j) effective and appropriate steps are taken to —
  - (i) collect all money due to public authority;
  - (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
  - (iii) manage available working capital efficiently and economically;
- (k) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, such expenditure is immediately reported, in writing, with particulars of the expenditure to the Finance Ministry.

- 6) I would recommend that section 33(1) be revised to remove the words “is an officer of Parliament” to better support the independence of the Auditor-General’s office whilst still acknowledging and requiring that the office account to Parliament. I would therefore propose that the section reads as follows:

“The Auditor-General is appointed by Parliament to perform the functions conferred by this Act and any other law.”

- 7) I would recommend that the word “Minister” in section 33(3) be replaced with “Parliament”. As suggested in my July 2021 submission, this would limit the potential for executive minded influence being exerted upon the Auditor General, and would allow for parliamentary oversight and hopefully public participation in the making and amendment of regulations. If

retained in its current form, section 33(3) would with respect, give the Minister too much power and create the potential for overreach.

In view of the above submission, it is proposed that section 33(8) be revised to read as follows:

**“Parliament** shall make arrangements - ”

- 8) In view of the submission at point 6 above, it is recommended that section 34 be revised to read as follows:

“Ministers and other public authorities shall act at all times in a manner that recognises and respects the status of the Auditor General as an oversight body accountable to Parliament and independent of government”

- 9) I support the recommendation<sup>3</sup> of Valerie Thomas of the Regulatory Institute that the word “Minister” in section 43 be replaced with “Parliament”.

I look forward to engaging further in the development of this model PFM law.

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<sup>3</sup> See comments of Valerie Thomas contained in a pdf attachment to her email of 1 September 2021