

ESKOM DEBT RELIEF AMENDMENT BILL [B38—2023]

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national treasury

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Rationale for the Eskom Debt Relief Amendment Bill

- The National Treasury is introducing interest on the Eskom Debt Relief package to better reflect the cost of this arrangement with the interest charged being market related.
- In developing the interest to be charged, the National Treasury was cognizant of the delicate balance that needed to be struck between ensuring that such interest does not negatively impact Eskom's cashflows, while at the same time reflecting a fair market related rate.
- This approach is different from what was initially envisaged in the Eskom Debt Relief Act, 2023 that the Debt Relief will be an interest-free loan.
- The interest will be paid on the disbursed amounts even if Eskom comply with the conditions. However, the interest will be higher when Eskom fails to comply with the conditions.
- The subordinated nature of the loan will remain the same, however it will be an interest-bearing loan.
- National Treasury has engaged and agreed with Eskom on the approach.

Key features of Eskom Debt Relief Amendment Bill

- The Amendment Bill seeks to amend the Eskom Debt Relief Act, 2023, so as to provide for the following:
 - payment of interest by Eskom on amounts advanced as a loan
 - for a power for the Minister of Finance to reduce the amounts for the requirements for Eskom in the event of non-compliance with conditions
- The Bill proposes that section 2 of the Eskom Debt Relief Act, 2023, be amended as follows:
 - (a) by the insertion after paragraph (a) of subsection (2) of the following paragraph:

“(aA) Eskom must pay interest on the amounts advanced as a loan, in terms of paragraph (a), at the rate determined by the Minister.”; and
 - (b) by the addition of the following subsection:

“(4)(a) If Eskom fails to comply with a condition determined in terms of subsection (2)(b), the Minister may, after consultation with Eskom, reduce amounts envisaged in subsection (1).

 - (b) The reduction in terms of paragraph (a)—
 - (i) applies to the portion of the amount not yet advanced to Eskom;
 - (ii) may not exceed five percent of the total amount for the applicable financial year; and
 - (iii) must be disclosed in the National Treasury’s next quarterly report to the relevant Parliamentary Committees”.

Approved conditions for the Debt Relief...1

- The debt relief envisaged in the Eskom Debt Relief Act, 2023, may only be used to settle debt and interest payments.
- Eskom may only incur capital expenditure for transmission and distribution except for—
 - a) generation regarding minimum emissions standards, flue-gas desulfurisation and required outages and maintenance of existing plant; and
 - b) a greenfield generation project with the written approval of the Minister of Finance.
- All proceeds from the sale of non-core assets, including the Eskom Finance Corporation and any property sales, will be used for the debt-relief arrangement.
- Eskom may only borrow new facilities with the written approval of the Minister of Finance.
- Eskom's guarantee framework agreement for the R350 billion facility (which expires at the end of March 2023) must, subject to the terms of that agreement, be reduced as the relevant redemptions fall due

Approved conditions for the Debt Relief...2

- Positive equity balances in Eskom's derivative contracts such as swaps and hedges or any other finance contract, may not be used to structure new debt or loan agreements or use any such balance as "margin financing" for another derivative contract or derivative overlays, without the written approval of the Minister of Finance.
- Eskom must continue to prioritise and expedite the implementation of the unbundling process, including, for example, obtaining lender consent to fully implement unbundling.
- Eskom may not implement remuneration adjustments that negatively affect its overall financial position and sustainability.
- Any transaction undertaken in terms of section 54 of the Public Finance Management Act, 1999, must be subject to joint approval by the Minister of Public Enterprises (MoPE) and the Minister of Finance.

Monitoring of Eskom compliance with the conditions

- National Treasury has established an Eskom Quarterly Monitoring Task Team (EQMTT) comprising of officials from National Treasury, the Department of Public Enterprises, and Eskom. The EQMTT will monitor Eskom's compliance with the Act's conditions and report quarterly if Eskom qualifies for the conversion of the loan to equity, to the Minister.
- If Eskom complies with all conditions, the loan for the quarter will be converted into equity.
- Failure by Eskom to comply or to demonstrate compliance with any of the conditions will result in the delay in the conversion of the loan (or part thereof) until the next quarterly meeting, where compliance is reassessed.
- Failure to comply or to demonstrate compliance with the conditions at the subsequent meeting, will result in the balance being carried over until 31 March 2026 whereafter the loan will be converted into a liability payable in cash and at market terms.
- If required, a separate loan agreement will be entered into on 1 April 2026 to set the terms and conditions related to the interest-bearing loan and Eskom will be required to pay the outstanding loan within a year.
- It is therefore important for Eskom to comply with all these conditions to enable the conversion of the loan amounts that would have been disbursed in the quarter into equity. It is also important for Eskom to comply with the conditions, as non-compliance will result in higher interest payable. In addition, the Minister may reduce future amounts from the debt relief arrangement.

Thank You