



# ANC Whip

The bi-monthly newsletter of the ANC Caucus

26 Sept 08

Financial Management of Parliament

## Financial Independence

The National Assembly on Friday passed the Financial Management of Parliament Bill, which will for the first time give Parliament a complete control over its finances, thus asserting its independence and strengthening its oversight role.

According to the Constitution of the Republic, Parliament is an independent authority in terms of the separation of powers between the three spheres of government. Further, the Constitution prescribes that Parliament must independently manage its own budget. However, because of the Executive Authority and accounting responsibility, such as Division of Revenue Act, all government funds fall under the Minister of Finance. Parliament's financial regulations and procedures have hitherto been conducted according to the PFMA. It has been argued that this is a disjuncture from the provisions guaranteeing both financial and operational independence from the Executive arm of state. The intention of the Bill is thus to guarantee the independence of Parliament from the Executive, essentially establishing Parliament as its own treasury and accounting according to its own provisions. The Bill was first considered in 1996 and for various reasons (especially relating to whether Parliament could legislate on behalf of Provinces and their Legislatures), was not passed and has revolved to its current format. Concerns still exist that such a Bill would violate the Constitutional provision of having a single National Revenue Fund and an integrated Treasury, which may

also lead to fragmented financial systems.

The ANC remains steadfast on the need to uphold the principle of separation of powers for the purpose of strengthening our democratic order. For a while now, Parliament has been on the receiving end of criticism for not being sufficiently independent from Executive influences, which undermined its oversight role. The implementation of this Bill would further assert the independence of Parliament and ensure that Parliament fully exercises its oversight mandate.

### Objectives of the Bill


The broad objective of the Bill is to assert the financial independence of Parliament from the Treasury. This establishes the Speaker of Parliament and the Chairperson of the House as the Executive Authority for Parliamentary funds, with the Secretary as the accounting officer. Following an audit by the Auditor General, a joint committee, in terms of the rules of Parliament, will report to the House on the Budget and financial management of Parliament. The gazetted objectives of the Bill are to:

- regulate the financial management of Parliament in a manner consistent with its status in terms of the Constitution;

- ensure that all revenue, expenditure, assets and liabilities of Parliament are managed efficiently, effectively and transparently;

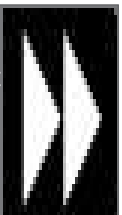
- to provide for the responsibilities of persons entrusted with financial management in Parliament; to provide financial management norms and standards for provincial legislatures;

### Political Considerations

In its submission, the National Treasury felt that the Bill was unnecessary and had the potential to duplicate financial systems. According to the Treasury, the financial management of Parliament could be exercised through a separate section of the PFMA. It further felt that the Bill breaches the Constitutional provision for a single treasury fund as well as matters relating to the introduction of Money Bills and may lead to fragmented financial systems as was the case with the apartheid era homelands systems. 

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## Maintaining separation of powers

The Financial Management of Parliament Bill has fundamental implications in the way Parliament has to manage and account for the public funds.

It is worth reminding everyone that in the past Parliament's financial management approach was regulated by the Public Finance Management Act. This Bill removes Parliament's financial management from the PFMA. We took this decision guided by the need to respect Parliament's constitutional status.

The principle of separation of powers between the Executive and Legislature guided and informed the drafting of this Bill.

However, we need to indicate that the Portfolio Committee also took note of Section 216 s (1) and (2) of the Constitution which emphasizes the need to maintain uniform treasury norms and standards across all organs of state and each sphere of government. We had to ensure that Parliament adheres to the Sections 216.

We had to strike a good balance between these two fundamental principles. We drafted a bill that ensures that the Executive Authority (Speaker of NA and Chairperson of NCOP acting jointly) are empowered to have a consultative relationship with the Minister of Finance with regards to the budget of Parliament.

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### We drafted a bill that ensures that the Executive Authority are empowered to have a consultative relationship with the Minister of Finance with regards to the budget of Parliament.

Parliament's strategic plan, annual performance plan, budget and adjustments.

The Accounting Officer (Secretary to Parliament) is responsible for the preparation of these plans and budgets.

The Executive Authority of Parliament must act in accordance with the Code of Ethics contained in Schedule 2 of this Bill.

The Code of Ethics requires Members of the Executive Authority to perform their duties and exercise their powers with honesty and diligence and in accordance with the highest ethical standards. Members of the Executive Authority are required to act in all respects in a manner that is consistent with the integrity of their office.

They are also required to arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from

arising, and if such a conflict arises, resolve the conflict in favour of the interest of Parliament and the public.

This Bill requires the Executive Authority to make regulations concerning the allocation and use of funds provided by Parliament to political parties. The Executive Authority must consult political parties represented in Parliament before making such regulations. These regulations empower the Accounting Officer to withhold funds allocated to a party if certain conditions are not fulfilled.

The Accounting Officer has to receive adequate information concerning the ability of the Party to manage and account for the funds given to it by Parliament.

The Accounting Officer may also withhold funds to a Political Party in instances of a qualified audit report until the Party assures the Accounting Officer that adequate measures are put in place to rectify the qualification.

The Portfolio Committee of Finance was of the view that institutional governance had to be strengthened in relation to supply chain management.

Members of Parliament and employees of Parliament are prohibited from tendering for contracts with Parliament.

Section 46 of the Bill reads as follows:

"No contract to provide goods or services may be awarded to :-



## Financial Independence

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It also raised the matter of who would rescue Parliament if huge debts and collateral matters arose.

There were also concerns that Provinces may also want their own systems and that consultation with the Minister of Finance also presupposes that the MEC must be consulted. Thus issues relating to

whether the Bill should be treated as a Section 75 or Section 76 Bill arose. There have also been discussions around how the consultation with the Minister of Finance should be handled.

The Bill proposes that Parliament should propose a budget to the Minister 9 months prior to the tabling

of the Budget and introduction of the Money Bill.

It has further been recommended that Parliament establish stringent reporting and compliance methods, including a more open and transparent supply chain and procurement systems given the ethical authority of Parliament.

# Corporate Reform

The National Council of Provinces has passed the Companies Bill, which will among others promote efficiency within companies and their management as well as ensure that company law in South Africa is compatible and in harmony with best practice internationally

**T**he corporate reform process in South Africa takes place within the context of a developmental state advanced by the African National Congress. The Companies Bill needs to be understood within a context of broader transformation of the economy towards a more developmental and inclusive growth path. It therefore seeks to fundamentally alter the way business has conducted itself in the past. In engaging with the Companies Bill, the ANC sought to create a companies legislative reform that places an emphasis towards South Africa's developmental vision and the building of a National Democratic Society (NDS). Companies should not only be viewed as tools of unbridled and selfish accumulation and maximization of shareholders wealth, but also as corporate citizens with certain rights and obligations provided for in a

democratic society. According to the King 2 report, "corporate citizenship is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life". The ANC through its vision of a national democratic society, argues that, "the first attribute of a developmental state in our conditions should be its strategic orientation: an approach premised on people-centred and people-driven change, and sustained development based on high growth rates, restructuring of the economy and socio-economic inclusion". Therefore the Companies Bill seeks to respond directly to issues of "sustained development based on high growth rates, restructuring of the economy and socio-economic inclusion".

This provides the developmental vision that the ANC seeks to achieve, and the private sector has a role in this regard. The 2007 National Conference has called for a, "thriving and integrated economy, which draws on the creativity and skills that our whole population can offer, building on South Africa's economic endowments to create decent work for all and eliminate poverty". The Companies Bill seeks to directly respond to this call. The National Conference further resolved that, "national prosperity through rising productivity, brought about by innovation and cutting edge technology, labour-absorbing industrial growth, competitive markets and a thriving small business and cooperative sector and the utilisation of information and communication technologies with efficient forms of production and management", is the route to seek for growth and development.



## Maintaining separation of powers

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- A Member of Parliament or member of the Cabinet;
- A Member of the Provincial Legislature or a Member of the Provincial Executive Council;
- A Municipal Councillor;
- A person in the employ of the State whose participation in bidding for the contract may result in a conflict of interest;
- Any entity in which a person mentioned in paragraphs (a) and (d) is a Director or has a controlling or other substantial interest.

It must be stressed that regulation issued by the Executive Authority may come into effect only after they

have been approved by Parliament. The Executive Authority may not issue written instructions inconsistent with this Bill or its regulations. This Bill makes a clear distinction between matters requiring disciplinary proceedings and those that needs criminal proceedings in the event of a commission of a financial misconduct by officials of Parliament and the Accounting Officer. Section 49 of the Bill states that if the Audit Committee becomes aware of information implicating the Accounting Officer in fraud,

corruption or gross negligence, it must report promptly to the Executive Authority and the Joint Parliamentary Committee. We are placing before you a Bill which has good check and balances in financial management. We request this House to agree to the passing of this Bill. It is a very good Bill.

■ This is a speech by Koena Moloto, ANC Whip for Finance, during the National Assembly debate on the Bill

# Corporate Reform

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The ANC is quite clear that, “the changes we seek will not emerge spontaneously from the ‘invisible hand’ of the market.

People acting collectively in the spirit of human solidarity must shape the patterns of economic development”.

In this process the state must play a central and strategic role, by directly investing in underdeveloped areas and directing private sector investment.

## **Content of the Bill**

The Companies Bill is a product of a policy stance of ensuring that “company law promotes competitiveness and development of the South African economy by encouraging entrepreneurship, enterprise development and employment opportunities by: (1) simplifying the procedures for forming companies; and reducing the costs associated with the formalities of forming a company and maintaining its existence”. Part of the intentions of the Bill is to “promote innovation and investment in South African markets and companies by providing: (a) flexibility in the design and organization of companies; and (b) a predictable and effective regulatory environment”.

The other issue that emerges prominently from the Bill is the promotion of efficiency of companies and their management as well as making company law in South Africa compatible and harmonious with best practice internationally.

This is sought through ensuring that transparency is encouraged and high standards of corporate governance are adhered to. As such major and prominent provisions of the current bill center on the following aspects: simplification; flexibility; corporate efficiency; transparency; and predictable regulation.

Part of the corporate efficiency aspect is to ensure that there is clarification of the board structures and director responsibilities, duties and liabilities including imposing personal liability on directors who act in malicious ways.

This effectively criminalizes actions that are deemed to be not in line with the law and conduct based on unlawfulness.

Other critical areas emerging from this aspect are that: “(a) mergers and takeovers regime should be reformed so that the law facilitates the creation of business combinations; and (b) the judicial management system for dealing with failing companies should be replaced by a more effective business rescue system”.

## **Political considerations:**

Some of the key political issues to further discuss and thrash out include charting a path for a progressive corporate reform agenda for South Africa by insisting that the current Companies Bill needs to promote development. In addition there is a need to emphasize that this process is not simply about an, “overemphasis corporate efficiency in a narrow sense” and “the need to bring our law into line with international trends and to reflect and accommodate the changing environment for business, both in South Africa and globally”.

However the broad policy thrust is adequate to provide clear direction in dealing with the Bill. Where business rescue is concerned it needs to be clearly stated that this should be done especially in circumstances where workers are likely to be retrenched.

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ANC Parliamentary Caucus  
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