



MEDIA STATEMENT

FURTHER COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

Following the Constitutional Court's judgment of 16 February 2022 on the matter between the Minister of Finance and Afribusines regarding the 2017 Preferential Procurement Regulations (the 2017 Regulations), the Minister of Finance launched an application to the Constitutional Court seeking clarity on its judgement of 16 February 2022. Judgment was handed down by the Constitutional Court today, 30 May 2022.

According to the Constitutional Court's judgment of today-

- section 18(1) of the Superior Courts Act suspended the operation of the Supreme Court of Appeal's 12-month suspension of the invalidation of the 2017 Regulations;
- in practical terms, the countdown on the 12-month period of suspension commenced immediately after the date of suspension. The countdown, however, was halted by the lodgement of the application for leave to appeal in the Constitutional Court; and
- the countdown resumed on 16 February 2022, when the Constitutional Court dismissed the Minister's appeal against the Supreme Court of Appeal's order.

Therefore, the Constitutional Court confirmed that the suspension of the declaration of the order of invalidity of the 2017 Regulations is still valid for the remainder of the 12-month period, namely until 15 February 2023. This means that-

- the 2017 Regulations in their entirety are still valid.
- from today all exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapse (according to the condition in the letters of exemptions);
- from today all new quotations must be requested and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations;
- a quotation requested or a tenders advertised before today must be dealt with in terms of the exemption and the internal procurement policy in place for the duration of the exemption. An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to 2017 Regulations; and
- the 2017 Regulations will remain in place until 15 February 2023 unless new regulations are promulgated before that date.

National Treasury is currently considering the public comments on the draft Preferential Procurement Regulations published on 10 March 2022 and will prepare final regulations that accord with the Constitutional Court's judgment of 16 February 2016.

Organs of state should by 16 February 2023, ensure that procurement policies in line with the Constitutional Court's judgment of 16 February 2022 are in place or, if new Preferential Procurement Regulations are promulgated, when these Regulations take effect.

Issued by National Treasury

Date: 30 May 2022

