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## GENERAL NOTICE

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### NOTICE 1964 OF 2001

### NATIONAL TREASURY

#### PUBLICATION OF THE MUNICIPAL FINANCE MANAGEMENT BILL, 2001

The Minister of Finance intends tabling the Municipal Finance Management Bill, 2001 in Parliament for consideration during the third parliamentary session of 2001. The Bill as approved by Cabinet is published in accordance with Rule 241 (c) of the Rules of the National Assembly.

The bill is tabled with Chapter 11 and certain clauses extracted from the main text. These are contained in Annexure A for information purposes. These clauses are subject to the passage of the constitutional amendment and will be included if the amendments have been passed by Parliament.

Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 1 October 2001.

All submissions must be addressed to:

**The Secretary to Parliament  
c/o Mr A Hermans  
Committee Section  
Parliament of the RSA  
P.O. Box 15  
CAPE TOWN  
8000**

**You can contact Mr Hermans at:  
Fax: (021) 462 2141  
Tel: (021) 403 37769  
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**GENERAL EXPLANATORY NOTE:**

Words underlined with a solid line indicate insertions in existing enactments.

# **MUNICIPAL FINANCE MANAGEMENT BILL, 2001**

To regulate financial management in the local sphere of government; to require that all revenue, expenditure, assets and liabilities of municipalities and municipal entities are managed economically, efficiently and effectively; to determine the responsibilities of persons entrusted with local sphere financial management; to regulate municipal borrowing; and to provide for matters connected therewith.

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#### CHAPTER 1

INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF THIS ACT	15
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#### Definitions

- In this Act unless the context indicates otherwise—
  - “**accounting authority**” means an authority referred to in section 57;
  - “**annual Division of Revenue Act**” means the Act of Parliament which must annually be enacted in terms of section 214 (1) of the Constitution; 20
  - “**Auditor-General**” means the person appointed as Auditor-General in terms of section 193 of the Constitution, and includes a person exercising a power or performing a duty of the Auditor-General in terms of a delegation by the Auditor-General;
  - “**business plan**”, in relation to a municipal entity, means a plan adopted by a municipal entity in terms of section 62; 25
  - “**category**”, in relation to municipalities, means a category A, B or C municipality envisaged in section 155 (1) of the Constitution;
  - “**chief financial officer**” means a person designated in terms of section 42 (2) (a);
  - “**councillor**” means a member of a municipal council; 30
  - “**councillor for financial matters**” means the councillor referred to in section 31;
  - “**creditor**”, in relation to a municipality, means any person to whom money is owing by the municipality;
  - “**debt**” means—
    - (a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or the issuance of municipal securities; or 35
    - (b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another;
  - “**delegation**”, in relation to a duty, includes an instruction or request to perform the duty, and “**delegate**” has a corresponding meaning; 40
  - “**district municipality**” means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 (1) of the Constitution as a category C municipality;
  - “**financial statements**” means statements consisting of at least—
    - (a) a balance sheet; 45
    - (b) an income statement;
    - (c) a cash-flow statement;
    - (d) any other statements that may be prescribed; and
    - (e) any notes to these statements;
  - “**financial year**” or “**fiscal year**” means a year ending 30 June; 50
  - “**financing agreement**” includes any loan agreement, lease, instalment purchase contract, or hire purchase arrangement under which a municipality undertakes to pay the capital cost of property, plant or equipment over a period of time;
  - “**governing board or body**”, in relation to a municipal entity, means a board of directors or equivalent governing body appointed in terms of the legislation under which the municipal entity was established; 55

- “**irregular expenditure**” means an expenditure, other than an unauthorised expenditure, incurred in contravention of, or that is not in accordance with, a requirement of this Act or any other applicable legislation;
- “**joint ownership control**”, in relation to a municipal entity, means ownership control over a municipal entity which is exercised by a municipality together with another municipality; 5
- “**lender**”, in relation to a municipality, means a person who provides debt finance to a municipality;
- “**local municipality**” means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155 (1) of the Constitution as a category B municipality; 10
- “**long term debt**” means debt that is repayable over a period exceeding one year;
- “**MEC for finance**” means the member of the Executive Council of a province responsible for finance in the province; 15
- “**MEC for local government**” means the member of the Executive Council of a province responsible for local government in the province;
- “**metropolitan municipality**” means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155 (1) of the Constitution as a category A municipality; 20
- “**minimum essential municipal service**” means a service, which, if not provided, would pose a threat to public health or safety;
- “**Minister**” means the Minister of Finance;
- “**municipal council**” or “**council**” means a municipal council referred to in section 157 of the Constitution; 25
- “**municipal entity**” means—
- (a) a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities;
  - (b) any subsidiary of a company that is a municipal entity in terms of paragraph (a); or 30
  - (c) a service utility;
- “**municipal debt instrument**” means any note, bond, debenture or other evidence of indebtedness issued by a municipality, including dematerialised or electronic evidence of indebtedness intended to be used in trade; 35
- “**municipality**”, when referred to as—
- (a) a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; and
  - (b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998); 40
- “**municipal manager**” means a person appointed in terms of section 82 of the Municipal Structures Act;
- “**Municipal Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 45
- “**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act;
- “**organised local government**” means an organisation recognised in terms of section 2 (1) of the Organised Local Government Act (Act No. 52 of 1997), to represent local government nationally or provincially; 50
- “**overspending**”—
- (a) in relation to the budget of a municipality, means when the operational or capital expenditure incurred by the municipality during a financial year, exceeds the total amount appropriated in that year’s budget for its operational or capital expenditure, as the case may be; 55
  - (b) in relation to a vote, means when expenditure under a vote exceeds the amount appropriated for that vote, subject to section 38; or
  - (c) in relation to expenditure under section 19, means when expenditure under that section exceeds the percentage allowed in that section; 60
- “**ownership control**”, in relation to a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation, means the ability to exercise any of the following powers to govern the

- financial and operating policies of the entity in order to obtain benefits from its activities:
- (a) to appoint or remove at least the majority of board of directors or equivalent governing body of that entity;
  - (b) to appoint or remove that entity's chief executive officer; 5
  - (c) to cast at least the majority of the votes at meetings of the board of directors or equivalent governing body; or
  - (d) to control at least the majority of the voting rights at a general meeting, in the case of a company, co-operative or other body having members;
- “political structure or functionary”**, in relation to a municipality, means— 10
- (a) the council of a municipality;
  - (b) any committee of a municipal council or other political structure elected, designated or appointed in terms of the Municipal Structures Act; or
  - (c) any councillor or other person elected, designated or appointed to a political office in terms of that Act; 15
- “prescribe”** means prescribe by regulation, instruction or guideline in terms of section 104;
- “provincial department”** has the meaning assigned to it in section 1 of the Public Finance Management Act;
- “provincial treasury”** has the meaning assigned to it in section 1 of the Public Finance Management Act; 20
- “Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act 1 of 1999);
- “security”** means a lien, pledge, mortgage, cession or other form of collateral intended to secure the interest of a creditor; 25
- “service utility”** means an entity established in terms of section 82 (1) (c) of the Municipal Systems Act;
- “short term debt”** means a debt that is repayable over a period not exceeding one year;
- “sole ownership control”**, in relation to a municipal entity, means ownership control over a municipal entity which is exercised by a single municipality alone; 30
- “standards of generally recognised accounting practice”** means an accounting practice complying with standards applicable to municipalities or municipal entities and issued in terms of the Public Finance Management Act;
- “this Act”** includes regulations made and instructions issued in terms of section 104 or 111; 35
- “transferring national officer”** means the accounting officer for a national department which transfers to a municipality an allocation referred to in the annual Division of Revenue Act;
- “transferring provincial officer”** means the accounting officer for a provincial department which transfers to a municipality an allocation referred to in the annual Division of Revenue Act; 40
- “unauthorised expenditure”**, in relation to a municipality, means an expenditure for which no provision is made in the budget of the municipality, and includes— 45
- (a) overspending the budget;
  - (b) overspending a vote; or
  - (c) expenditure unrelated to the department or functional area covered by the vote;
- “vote”** means—
- (a) one of the main segments into which a budget of a municipality is divided for the appropriation of money for the different departments or functional areas of the municipality; and 50
  - (b) which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

## Object of this Act

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2. The object of this Act is to secure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of the local government institutions to which this Act applies.

**Local government institutions to which this Act applies**

3. (1) This Act applies to—
- (a) municipalities; and
  - (b) municipal entities.
- (2) In the event of any inconsistency between this Act and any other legislation concerning financial management of municipalities or municipal entities, this Act prevails. 5

**Amendments to this Act**

4. Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament—
- (a) by the Minister only; or
  - (b) only after the Minister has been consulted in writing on the contents of the draft legislation, and has responded in writing. 10

**CHAPTER 2**

15

**SUPERVISION OVER LOCAL GOVERNMENT FINANCE MANAGEMENT****Functions and powers of National Treasury**

5. (1) The National Treasury must—
- (a) promote the object of this Act as set out in section 2; and
  - (b) perform the other functions assigned to the National Treasury in terms of this Act. 20
- (2) To the extent necessary to perform the functions mentioned in subsection (1), the National Treasury may—
- (a) monitor the budgets of municipalities to establish whether they—
    - (i) are consistent with the national government's fiscal policy framework and macro-economic policy; and 25
    - (ii) comply with sections 16 and 20;
  - (b) monitor expenditure and revenue of municipalities to establish whether expenditure and revenue remain within budget;
  - (c) prescribe uniform treasury norms and standards for— 30
    - (i) municipalities, including financial management in municipalities; and
    - (ii) municipal entities, including financial management in municipal entities;
  - (d) establish annually a growth factor for the budgets of municipalities as envisaged in section 16 (1) (d);
  - (e) monitor and assess compliance by municipalities and municipal entities with— 35
    - (i) this Act; and
    - (ii) any applicable standards of generally recognised accounting practice and uniform classification systems;
  - (f) assist municipalities and municipal entities in building their capacity for efficient, effective and transparent financial management; 40
  - (g) review any system of financial management and internal control in any municipality;
  - (h) take appropriate steps, including the withholding of funds in terms of section 216 (2) of the Constitution, to address a serious or persistent material breach of this Act by a municipality or municipal entity; and 45
  - (i) do anything further that is necessary to fulfil its responsibilities effectively.

**Delegations by National Treasury**

6. (1) The Minister may delegate, in writing, any of the powers or duties entrusted to the National Treasury in terms of this Act to— 50
- (a) the Director-General of the National Treasury;
  - (b) the Director-General of a national department charged with responsibility for local government;

- (c) a provincial treasury, or to the head of a provincial department, as the Minister and the relevant MEC in the province concerned may agree.
- (2) A delegation in terms of subsection (1)—
- (a) is subject to any limitations or conditions that the Minister may impose; and
- (b) does not divest the National Treasury of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty. 5
- (3) A delegation in terms of subsection (1) (a) or (b) may authorise the Director-General of the National Treasury, or the Director-General of the department concerned, to sub-delegate, in writing, the delegated power or duty to—
- (a) another National Treasury official or an official in that department; 10
- (b) the holder of a specific post in the National Treasury or that department;
- (c) the municipal manager of a municipality; or
- (d) the accounting authority of a municipal entity.
- (4) A delegation in terms of subsection (1) (c) may authorise a provincial treasury or head of a provincial department to sub-delegate, in writing, the delegated power or duty to— 15
- (a) an official in that provincial treasury or department;
- (b) the holder of a specific post in that provincial treasury or department;
- (c) the municipal manager of a municipality; or
- (d) the accounting authority of a municipal entity. 20
- (5) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

## CHAPTER 3 25

### MUNICIPAL REVENUE

#### *Part 1: Municipal bank accounts*

#### **Opening of bank accounts**

7. (1) Every municipality must open and maintain bank accounts in the name of the municipality, into which all money received by the municipality must promptly be paid. 30
- (2) A municipality may not open a bank account abroad or with a bank not registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).
- (3) Money may be withdrawn from a municipal bank account only in terms of section 11 (1).

#### **Bank accounts designated for inter-governmental allocations 35**

8. (1) One of the bank accounts opened by a municipality, to be known as the primary bank account, must be designated for the receipt of all allocations to the municipality in terms of the annual Division of Revenue Act and those made to it by other municipalities.
- (2) A municipality— 40
- (a) must deposit all allocations made to the municipality in terms of the annual Division of Revenue Act and received from other municipalities into its primary bank account; and
- (b) may change its primary bank account during a financial year only with the written consent of the National Treasury. 45

#### **Notification of opening of bank accounts**

9. The municipal manager must without delay notify the National Treasury, the relevant provincial treasury and the Auditor-General, in writing—
- (a) of each bank account opened by the municipality, including— 50
- (i) the name of the bank where the account has been opened;
- (ii) the name, address and number of the branch of the bank where the account has been opened; and
- (iii) the type, name and number of the account; and
- (b) which of these accounts is its primary account.

**Control of municipal bank accounts**

- 10.** (1) The municipal manager—
- (a) is accountable to the municipal council for the municipality's bank accounts; and
  - (b) must enforce compliance with the provisions of sections 7, 8 and 11. 5
- (2) A municipal manager may not delegate the duties mentioned in subsection (1) (b) to another person except to the municipality's chief financial officer.

**Withdrawals from municipal bank accounts**

- 11.** (1) Only the municipal manager, or the chief financial officer acting on the written authority of the municipal manager, may withdraw money or authorise the withdrawal of money from the municipality's bank accounts, and may do so only—
- (a) for expenditures authorised in terms of a budget approved by the municipal council;
  - (b) to pay over to other entities or agencies money collected by the municipality on behalf of such entity or agency; 15
  - (c) to refund money incorrectly paid into the bank accounts;
  - (d) to refund guarantees, sureties and security deposits;
  - (e) for cash management and investment purposes in accordance with section 12 and within any framework that may be prescribed in terms of that section; or
  - (f) for any other purpose as may be prescribed. 20
- (2) Money may be withdrawn from a bank account in terms of subsection (1) (b), (c), (d), (e) or (f) without appropriation by the municipal council.
- (3) The municipal manager must—
- (a) table in the municipal council on at least a quarterly basis a consolidated report of all withdrawals in terms of subsection (1) (b), (c), (d), (e) or (f); and 25
  - (b) make the report available for public inspection in a prescribed manner.

***Part 2: Cash, investment and asset management*****Cash management and investments**

- 12.** (1) The National Treasury may prescribe a framework within which municipalities must—
- (a) conduct their cash management; and
  - (b) invest money not immediately required. 30
- (2) A municipality must establish appropriate and effective cash management and investment arrangements, and these must be in accordance with any framework prescribed in terms of subsection (1). 35
- (3) A bank that has opened an account for a municipality must promptly—
- (a) notify the National Treasury, in writing, of such account when the account is opened; and
  - (b) disclose information regarding the account when so requested by the National Treasury, the relevant provincial treasury or the Auditor-General. 40
- (4) An institution with which a municipality has invested money must—
- (a) notify the National Treasury, in writing, that it holds money as an investment for the municipality; and
  - (b) promptly disclose information regarding the investment when so requested by the National Treasury, the relevant provincial treasury or the Auditor-General. 45

**Disposal of assets**

- 13.** (1) A municipality may not sell, transfer ownership or otherwise permanently dispose of an asset needed to provide a minimum essential municipal service.
- (2) A municipality may sell, transfer, or otherwise dispose of an asset other than an asset described in subsection (1) only after the council, in a meeting open to the public, has—
- (a) on reasonable grounds decided that the asset is not needed to provide a minimum essential municipal service; and
  - (b) considered the fair market value of the asset and the economic and community value to be received in exchange for the asset. 55

(3) A decision by a municipal council that a specific asset is not needed to provide a minimum essential municipal service, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.

#### **Acquisition and disposal of minority interests in companies and other entities**

- 14.** A municipality, a municipal entity or a subsidiary of a municipal entity may— 5
- (a) acquire or hold a minority interest in any company or other entity, but only if the other interests are held by—
- (i) another municipality or municipalities;
  - (ii) the national or a provincial government;
  - (iii) a municipal entity over which that municipality or that other municipal- 10  
entity or any of those other municipalities exercise sole or joint ownership control; or
  - (iv) a subsidiary of a municipal entity referred to in subparagraph (iii); or
- (b) dispose of any interest which it holds in terms of paragraph (a) in a company or other entity, but only to— 15
- (i) another municipality;
  - (ii) the national or a provincial government;
  - (iii) a municipal entity referred to in paragraph (a) (iii); or
  - (iv) a subsidiary of a municipal entity referred to in paragraph (a) (iii).

### **CHAPTER 4** 20

#### **MUNICIPAL BUDGETS**

##### **Annual appropriations**

**15.** A municipal council must for each financial year, by way of an annual budget, appropriate money for the requirements of the municipality.

##### **Municipal annual budgets** 25

- 16.** (1) The annual budget—
- (a) must be in accordance with a format as prescribed;
- (b) must include an operating budget which is balanced, so that appropriated operating expenditure does not exceed realistically anticipated revenue for the year— 30
- (i) plus such amount of prior years' accumulated surplus as is actually available for operating expenditure; or
  - (ii) less such percentage of prior years' accumulated deficits as may be prescribed;
- (c) must include a capital budget which is balanced, so that appropriated capital expenditure does not exceed the amount realistically anticipated to be available for capital expenditure; and 35
- (d) may not exceed the previous financial year's budget by more than a growth factor determined annually by the National Treasury for municipalities generally, except with the written approval of the National Treasury. 40
- (2) When calculating, for the purpose of subsection (1) (b), realistically anticipated revenue for the year, and, for the purpose of subsection (1) (c), the amount realistically anticipated to be available for capital expenditure, a municipality must take into account previous years' actual figures in this respect and the actual revenue for the year preceding the previous financial year. 45
- (3) The annual budget must at least contain—
- (a) realistic estimates of all revenue anticipated to be received during the financial year to which the budget relates;
  - (b) realistic estimates of expenditure for that financial year, broken down per vote as may be appropriate for the municipality concerned; 50
  - (c) realistic estimates of interest and principal payments;
  - (d) realistic estimates of capital expenditure for that financial year and the projected financial implications of that expenditure for future financial years, including future operating revenues and expenditures and principal and interest payments; 55

- (e) an indication of intentions regarding borrowing and other forms of public liability that will increase the municipality's debt during that financial year and future financial years;
  - (f) the projected—
    - (i) revenue for the previous financial year; 5
    - (ii) expenditure for the previous financial year, broken down per vote;
    - (iii) borrowing for the previous financial year; and
    - (iv) funding flows from the municipality to municipal entities and from municipal entities to the municipality, during the previous financial year;
  - (g) the actual— 10
    - (i) revenue for the year preceding the previous financial year;
    - (ii) expenditure for the year preceding the previous financial year, broken down per vote;
    - (iii) borrowing for the year preceding the previous financial year; and
    - (iv) funding flow from the municipality to municipal entities and from municipal entities to the municipality, during the year preceding the previous financial year; and 15
  - (h) any other information as may be prescribed, including any multi-year budget information.
- (4) When an annual budget is tabled in the municipal council, the municipal manager must submit measurable objectives for each vote in the budget. 20

#### Budget process

17. (1) The councillor for financial matters must—
- (a) ensure that a draft annual budget containing the prescribed particulars is prepared at least a prescribed number of days, or if a number of days is not prescribed, at least four months, before the start of each financial year; and 25
  - (b) upon completion of the draft budget—
    - (i) follow a process of community participation in accordance with Chapter 4 of the Municipal Systems Act; and
    - (ii) comply with subsection (2). 30
- (2) The councillor for financial matters must—
- (a) immediately upon the draft budget's preparation, publish in a newspaper of general circulation in the municipality a notice—
    - (i) stating that the draft annual budget is available for public scrutiny during office hours at the main administrative office of the municipality and such other places as may be specified in the notice; 35
    - (ii) inviting the public to submit written comments and representations to the municipality within a period specified in the notice; and
    - (iii) specifying the dates set down by the council for public hearings on the draft annual budget; and 40
  - (b) at the next sitting of the municipal council following the draft budget's preparation, table the draft budget in the council for discussion and public hearings.
- (3) The councillor for financial matters must submit a copy of the municipality's draft budget immediately upon the draft budget's preparation, and a copy of the municipality's adopted budget within 7 days of the budget's adoption by the council, to— 45
- (a) the National Treasury, in the case of a municipality whose name appears on a list published by the Minister by notice in the *Government Gazette*;
  - (b) the relevant provincial treasury, in the case of a municipality whose name does not appear on the list referred to in paragraph (a); 50
  - (c) the district municipality in whose area it falls, in the case of a local municipality; and
  - (d) the local municipalities in its area, in the case of a district municipality.
- (4) Any comments the National Treasury or the relevant provincial treasury may wish to offer on the draft budget must be submitted to the municipality within 40 days of receipt of the draft budget. 55

- (5) The councillor for financial matters must as soon as the council discussion and the public hearings referred to in subsection (2) (b) have been completed—
- (a) direct the municipal manager to prepare the final budget for the financial year, taking into account—
    - (i) the considerations of and public hearings conducted by the council on the draft budget; 5
    - (ii) any public comment and representations received by the municipality in terms of subsection (2) (a);
    - (iii) any recommendations of the National Treasury and the relevant provincial treasury on the draft budget; and 10
    - (iv) any guidelines and policy statements issued by the National Treasury; and
  - (b) table the budget in the council for approval.
- (6) The councillor for financial matters must manage the budget process in such a way that the budget referred to in subsection (5) (b) is tabled in the council at least 30 days before the start of the financial year to which the budget relates. 15
- (7) A municipality must approve its annual budget before the start of the financial year to which it relates.

### Approval of annual budgets

- 18.** (1) The annual budget of a municipality is approved by a decision taken by the council of the municipality with a supporting vote of a majority of the members of the council. 20
- (2) If a municipal council fails to approve an annual budget by the majority required in terms of subsection (1), the council must reconsider the budget and again vote on the budget or an amended version thereof within seven days of the meeting that failed to approve the budget. 25
- (3) The process provided for in subsection (2) must be repeated until a budget is approved.
- (4) If a municipal council has not approved an annual budget before the start of the financial year, the MEC for local government must direct the council to adopt the budget within 14 days. 30

### Consequences of failure to approve budgets

- 19.** (1) If the municipal council has not approved an annual budget before the start of the financial year, funds may, with the approval of the MEC for local government, be withdrawn from the municipality's bank accounts in accordance with this section for the requirements of the municipality, until the budget is approved as provided for in this Act. 35
- (2) Funds withdrawn from a municipality's bank accounts in terms of subsection (1)—
- (a) may be used only to defray current expenditure in connection with votes for which funds were appropriated in the last approved annual budget or adjustments budget; and 40
  - (b) may not—
    - (i) during any month, exceed 8 per cent of the total amount appropriated in the last approved annual budget for current expenditure, which percentage must proportionately be scaled down if revenue flows are not at least at the same level as the previous financial year; and 45
    - (ii) exceed the amount actually available.
- (3) The funds provided for in subsection (1) are not additional to funds appropriated for that financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in a subsequently approved annual budget for that financial year. 50

### Municipal adjustments budgets

- 20.** (1) The councillor for financial matters—
- (a) may table an adjustments budget in the municipal council as and when necessary, but any second or subsequent adjustments budget during the same financial year may only be tabled with the approval of the MEC for local government acting within a prescribed framework; and 55

- (b) must table an adjustments budget when this becomes necessary—
  - (i) to adjust the budget due to under collection of revenue;
  - (ii) to appropriate funds for the reduction of debt or the funding of capital projects; or
  - (iii) to provide for other matters that may be prescribed. 5
- (2) An adjustments budget, apart from the matters referred to in subsection (1) (b) (i), (ii) and (iii), may provide only for—
  - (a) the appropriation of any net additional revenues that have become available, above and beyond those anticipated in the approved budget;
  - (b) unforeseeable and unavoidable expenditure recommended by the municipal manager, within a prescribed framework; 10
  - (c) the utilisation of savings between votes; and
  - (d) any other matter prescribed, or approved by the Minister.
- (3) An adjustments budget must be in the prescribed format and contain the prescribed information, and must be balanced as provided for in section 16. 15
- (4) Section 17 (3) and (4) apply in respect of a draft adjustments budget and the reference in that section to a draft budget must be read as a reference to a draft adjustments budget.
- (5) A municipality must take into account any recommendations of the National Treasury and the relevant provincial treasury before it approves an adjustments budget. 20
- (6) Section 18 (1) and (2) applies in respect of the approval of an adjustments budget, and in such application a reference in that section to an annual budget must be read as a reference to an adjustments budget.

#### **Municipalities to submit reports on state of their budgets**

- 21. (1) The municipal manager of a municipality must, on a monthly basis or as may be prescribed, submit reports in the prescribed format on the state of the municipality's budget to—
  - (a) the National Treasury and the relevant provincial treasury, in the case of a municipality whose name appears on the list published in terms of section 17 (3) (a); 30
  - (b) the relevant provincial treasury, in the case of a district municipality whose name does not appear on the list referred to in paragraph (a); and
  - (c) the district municipality in whose area it falls, in the case of a local municipality.
- (2) A report in terms of subsection (1) must—
  - (a) cover a prescribed reporting period; and
  - (b) be submitted within 10 days after the end of each reporting period. 35
- (3) When a district municipality submits its report, it must attach the reports of local municipalities within its area that were submitted to it in terms of subsection (1) (c).
- (4) A report must contain the prescribed particulars and must specify the following amounts and compare those amounts in each case with the corresponding budgeted amounts for the relevant financial year:
  - (a) the actual revenue received during the reporting period, and during the financial year up to the end of that period;
  - (b) the actual expenditure (distinguishing between capital and operating expenditure) for that period, and for the financial year up to the end of that period; 45
  - and
  - (c) actual borrowings for that period, and for the financial year up to the end of that period.

#### **Unauthorised and irregular expenditures** 50

- 22. (1) A municipality must recover any unauthorised or irregular expenditure from the person liable for that unauthorised or irregular expenditure unless the expenditure—
  - (a) in the case of unauthorised expenditure, is—
    - (i) authorised by the municipal council in an adjustments budget; or
    - (ii) certified as irrecoverable and written off by the council; and 55
  - (b) in the case of irregular expenditure, is certified as irrecoverable and written off by the council.
- (2) Without limiting liability in terms of the common law or other legislation—

- (a) the municipal manager is liable for an unauthorised expenditure, subject to subsection (3); and
- (b) the person who committed, made or approved an irregular expenditure is liable for that expenditure.
- (3) If a political structure or functionary of a municipality takes a decision which, if implemented, would or is likely to result in an unauthorised or irregular expenditure, the municipal manager is liable for any ensuing unauthorised or irregular expenditure unless the municipal manager has informed the relevant political structure or functionary, in writing, that the expenditure will or is likely to be unauthorised or irregular. 5
- (4) If a political structure or functionary of the municipality is responsible for unauthorised expenditure, the Auditor-General must inform the relevant MEC for local government as soon as this comes to the Auditor-General's attention. 10
- (5) The municipal manager must inform the National Treasury and the relevant provincial treasury in writing of—
- (a) any material unauthorised or irregular expenditure that has been incurred by the municipality; and 15
- (b) the steps that have been taken—
- (i) to recover or rectify the unauthorised or irregular expenditure; and
- (ii) to prevent a recurrence.
- (6) The writing off of any unauthorised or irregular expenditure as irrecoverable in terms of subsection (1) is no excuse in criminal proceedings against a person charged with the commission of an offence relating to such unauthorised or irregular expenditure. 20
- (7) The council of a municipality must ensure that irregular expenditure that occurred in the municipality and that may constitute a criminal offence are reported to the South African Police Service. 25
- (8) The National Treasury may regulate the application of this section by regulation in terms of section 104.

#### **Assignment of new functions and powers to municipalities**

23. (1) If draft national or provincial legislation that assigns an additional function or power to, or imposes any other new obligation on, a municipality, is introduced in Parliament or a provincial legislature, the person introducing the draft legislation must, in a memorandum accompanying that legislation, give at least a three year projection of the financial implications of that function, power or obligation for the municipality and must also disclose any possible financial liabilities or risks after the three year period. 35
- (2) In addition to the procedures required in section 9 of the Municipal Systems Act, the National Treasury and the Minister responsible for local government must be consulted before such legislation is introduced in Parliament or the provincial legislature concerned.
- (3) If an additional function or power is assigned to, or any other new obligation is imposed on, a municipality in terms of national or provincial legislation, the functionary assigning the function or power, or imposing the obligation, must submit to the National Treasury and the Minister responsible for local government a memorandum giving at least a three year projection of the financial implications of that function, power or obligation for the municipality. 40 45
- (4) Subsection (3) does not apply to the transfer of powers or functions to a municipality in terms of section 85 of the Municipal Structures Act.

### **CHAPTER 5**

#### **DEBT**

- Short term debt** 50
24. (1) A municipality may incur short term debt only in accordance with and subject to the provisions of this Chapter.
- (2) A municipality may incur short term debt only when necessary to bridge—
- (a) shortfalls within a financial year during which the debt is incurred, in anticipation of specific and realistic anticipated income to be received within that financial year; or 55

- (b) capital needs within a financial year in anticipation of funds deriving from specific and enforceable grant or long term debt commitments.
- (3) A municipality—
  - (a) must pay off short term debt within the fiscal year; and
  - (b) may not renew or refinance its short term debt. 5
- (4) (a) No lender may wilfully extend credit to a municipality for the purpose of renewing or refinancing short term debt that must be paid off in terms of subsection (3) (a).
  - (b) If a lender wilfully extends credit to a municipality in contravention of paragraph (a), the municipality is not bound to repay the loan including interest on the loan. 10
- (5) Subsection (4) (b) does not apply if the lender—
  - (a) relied in good faith on written representations of the municipality as to the purpose of the borrowing; and
  - (b) did not know and had no reason to believe that the borrowing was for the purpose of renewing or refinancing its short term debt. 15

### Long term debt

- 25. (1) A municipality may incur long-term debt only in accordance with and subject to the provisions of this Chapter.
- (2) A municipality may incur long term debt only for purpose of—
  - (a) capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution; or
  - (b) re-financing existing long term debt, provided such re-financing is in accordance with a prescribed framework. 20
- (3) Such capital expenditure may include—
  - (a) financing costs;
  - (b) costs of professional services directly related to the expenditure; and
  - (c) any other costs as may be prescribed. 25

### Conditions on which debt may be incurred

- 26. A municipality may incur debt provided—
  - (a) the debt is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of other currencies;
  - (b) the debt is approved by resolution of the council;
  - (c) the municipal manager, at least 14 days prior to the meeting of the council at which the resolution is to be considered, has published a notice in a newspaper of general circulation in the municipality or in another manner as may be prescribed—
    - (i) stating particulars of the draft resolution, including the amount of the debt, the purposes for which the debt is to be incurred and particulars of any security to be provided; and 35
    - (ii) inviting the public to submit written comments or representations to the council in respect of the draft resolution; 40
  - (d) the municipal manager, 14 days prior to the adoption of the resolution, has submitted an information statement to the council setting out—
    - (i) the purpose for which the debt is to be incurred; 45
    - (ii) the anticipated total cost in connection with such debt over the repayment period;
    - (iii) the essential repayment terms, including the anticipated debt repayment schedule; and
    - (iv) particulars of any security to be provided; 50
  - (e) the relevant resolution was adopted at a meeting of the council which was open to attendance by the public; and
  - (f) where security is to be provided, the provisions of section 27 (4) have been complied with.

### Security 55

- 27. (1) A municipality may by resolution of the council authorise security to be provided for any of its debt obligations.

- (2) Without detracting from the generality of subsection (1), a municipality, when incurring debt, may—
- (a) undertake to effect payment directly from monies or sources that may become available and authorise direct access to such sources to ensure payment of those obligations; 5
  - (b) undertake to deposit funds with the lender or a third party as security for the debt;
  - (c) agree to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures; 10
  - (d) cede as security any category of revenue or rights to future revenue specified in the financing agreement or information statement contemplated in section 26 (d);
  - (e) undertake to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms; and 15
  - (f) agree to such other arrangements as the municipality may consider necessary and prudent.
- (3) A council resolution authorising the provision of security in terms of subsection (1)—
- (a) must determine whether the asset or right with respect to which the security is provided, is necessary for providing a minimum essential municipal service; and 20
  - (b) if so, must indicate the manner in which the availability of the asset or right for the provision of that service will be protected.
- (4) If the resolution has determined that the asset or right is necessary for providing a minimum essential municipal service, the lender to whom the municipal security is provided, may not, in the event of a default by the municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum essential municipal service. 25
- (5) A determination in terms of subsection (4) that an asset or right is not necessary for providing a minimum essential municipal service is binding on the municipality until the secured debt has been paid in full. 30

### Disclosure

28. Any person involved in the borrowing of money by a municipality must, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor— 35
- (a) disclose all information in that person's possession or within that person's knowledge that may be material to the decision of that prospective lender or a prospective investor; and
  - (b) take reasonable care to ensure the accuracy of any information disclosed. 40

### Municipal guarantees

29. A municipality may guarantee any debt of a municipal entity under its sole or joint ownership control provided—
- (a) the debt is reflected in the business plan of the entity approved by the relevant municipal council or councils; 45
  - (b) the debt is disclosed in the municipality's consolidated financial statements, in the case of a municipality exercising sole ownership control over the entity; and
  - (c) the guarantee is authorised by the relevant municipal council or councils in the manner and subject to the conditions provided in this Chapter. 50

### National and provincial guarantees

30. Neither the national nor a provincial government may guarantee debt of a municipality or of a municipal entity.

## CHAPTER 6

### COUNCILLORS FOR FINANCIAL MATTERS

#### Councillors responsible for financial matters

- 31.** (1) One of the members of a municipal council must be responsible for financial matters in the municipality. 5
- (2) The councillor responsible for financial matters—
- (a) in the case of a municipality with an executive committee referred to in section 42 of the Municipal Structures Act, must be the mayor or, if the council has designated another councillor, that other councillor;
  - (b) in the case of a municipality with an executive mayor referred to in section 54 of the Municipal Structures Act, must be the executive mayor or, if the executive mayor has designated another councillor, that other councillor; and 10
  - (c) in the case of a municipality that does not have either an executive committee or an executive mayor, must be a councillor designated by the council.

#### Responsibilities of councillors for financial matters 15

- 32.** The councillor for financial matters must—
- (a) exercise general political control over the financial affairs of the municipality, but may not interfere in the financial management responsibilities assigned in terms of this Act to the municipal manager or the chief financial officer;
  - (b) oversee expenditure and revenue collection with a view to preventing overspending of the municipality's budget or a vote; 20
  - (c) report regularly to the council on the financial state of affairs of the municipality; and
  - (d) perform the other duties assigned by the council or in terms of this Act to the councillor for financial matters. 25

#### Delegations by councillors for financial matters

- 33.** (1) The councillor for financial matters may delegate in writing any of the powers or duties entrusted to that councillor in terms of this Act to any other councillor of the municipality.
- (2) A delegation in terms of subsection (1)— 30
- (a) is subject to any limitations or conditions that the councillor for financial matters may impose; and
  - (b) does not divest the councillor for financial matters of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty. 35

## CHAPTER 7

### RESPONSIBILITIES OF MUNICIPAL OFFICIALS

#### *Part 1: Municipal managers*

#### Municipal manager

- 34.** (1) The municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act, and is responsible for assuring compliance with this Act. 40
- (2) If the municipal manager is absent or otherwise unable to perform the functions of office, or during a vacancy, the acting municipal manager is the accounting officer for the purposes of this Act, and is responsible for assuring compliance with this Act. 45

#### General responsibilities of municipal managers as accounting officers

- 35.** As the accounting officer of a municipality, the municipal manager—
- (a) must ensure that the municipality has and maintains—

- (i) effective, efficient and transparent systems of financial and risk management and internal control;
- (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with section 105 and any prescribed norms and standards; 5
- (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
- (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (b) must keep full and proper records of the financial affairs of the municipality in accordance with any prescribed norms and standards; 10
- (c) is responsible for the effective, efficient, economical and transparent use of the resources of the municipality;
- (d) must take effective and appropriate steps to—
  - (i) collect all money due to the municipality; 15
  - (ii) prevent unauthorised and irregular expenditure and losses resulting from criminal conduct; and
  - (iii) manage available working capital efficiently and economically;
- (e) must promptly notify the National Treasury if a bank account of the municipality is overdrawn for a period exceeding 10 days; 20
- (f) must promptly report to the South African Police Service all—
  - (i) irregular expenditures that may constitute a criminal offence; and
  - (ii) other losses resulting from criminal conduct;
- (g) is responsible for the management of—
  - (i) the assets of the municipality, including the safeguarding and the maintenance of those assets; and 25
  - (ii) the liabilities of the municipality;
- (h) must comply with any tax, levy, duty, pension, audit and other commitments as required by legislation;
- (i) must settle all contractual obligations and pay all money owing, within the agreed period, or if there is no agreed period, within 30 days; 30
- (j) on discovery of any unauthorised or irregular expenditure, must promptly report, in writing, particulars of the expenditure to the municipal council and the Auditor-General;
- (k) must take effective and appropriate disciplinary steps against any official in the service of the municipality who— 35
  - (i) contravenes or fails to comply with a provision of this Act;
  - (ii) commits an act which undermines the financial management and internal control system of the municipality; or
  - (iii) makes or permits an unauthorised or irregular expenditure; 40
- (l) must promptly report to the MEC for local government any interference by a councillor in the staffing or financial management responsibilities of the municipal manager or the chief financial officer;
- (m) must, before transferring any funds otherwise than in terms of a commercial or other business transaction to an organisation or other entity outside the municipality, be satisfied that the organisation or entity implements effective, efficient and transparent financial management and internal control systems; 45
- (n) must enforce compliance with any prescribed conditions if the municipality gives financial assistance to any organisation, entity or person;
- (o) must promptly inform the National Treasury and the relevant provincial treasury in writing on any new entity which the municipality intends to establish, or in the establishment of which it takes the initiative, or in which it intends to acquire an interest; 50
- (p) is responsible for the submission by the municipality of all reports, returns, notices and other information to the relevant provincial legislature, the National Treasury, the relevant provincial treasury or the Auditor-General, as may be required by this Act; and 55
- (q) must comply, and take all reasonable steps to ensure compliance by the municipality, with the provisions of this Act.

**Municipal managers' responsibilities relating to budgetary control**

- 36.** (1) A municipal manager must take effective and appropriate steps to ensure that—
- (a) the spending of funds is in accordance with the budget;
  - (b) revenues and expenditures are properly monitored; and 5
  - (c) spending is reduced as necessary when revenues are anticipated to be less than projected in the budget.
- (2) A municipal manager, for the purposes of subsection (1), must—
- (a) within 10 days of the end of each month submit to the councillor for financial matters— 10
    - (i) information in the prescribed format on actual revenue and expenditure for that month and for the year up to that month;
    - (ii) a projection of anticipated expenditure and revenue collection for the remainder of the current financial year; and
    - (iii) when necessary, an explanation of any material variances and a summary 15 of the steps that are taken or are to be taken to ensure that the projected expenditure and revenue remain within budget;
  - (b) report to the councillor for financial matters any impending— 20
    - (i) under collection of revenue due;
    - (ii) shortfalls in budgeted revenue;
    - (iii) overspending of the municipality's budget; and
    - (iv) any appropriate steps to be taken.
- (3) The councillor for financial matters must table in the council all statements and reports received from the municipal manager in terms of subsection (2) (a) and (b) at the first council meeting held after the receipt of the statement or report. 25

**Responsibilities of municipal managers relating to intergovernmental transfers**

- 37.** (1) The municipal manager of a municipality must within 10 days after the end of each prescribed period submit a report to the relevant transferring national or provincial officer on each intergovernmental allocation transferred to the municipality, stating—
- (a) the amount of funds received by the municipality under that allocation up to 30 the month reported on;
  - (b) the amount of funds under that allocation delayed or withheld from the municipality up to the month reported on;
  - (c) the actual amount spent by the municipality under that allocation up to the 35 month reported on;
  - (d) the extent of compliance with the conditions of that allocation;
  - (e) an explanation for any material problems or variances experienced by the municipality regarding the funds received by the municipality under that allocation, and a summary of the steps taken to deal with such problems or 40 variances; and
  - (f) such other information as the National Treasury may determine.

**Virement**

- 38.** (1) A municipality may not utilise a saving in the amount appropriated under a vote in a budget towards the defrayment of excess expenditure under another vote in the budget unless such utilisation is authorised in an adjustments budget in terms of section 20. 45

(2) If a budget appropriates funds for specific purposes within a vote, the provisions of subsection (1) apply to those specific appropriations as if they were separate votes.

**Information to be submitted by municipal managers**

- 39.** (1) The municipal manager of a municipality must submit to the National Treasury, the relevant provincial treasury or the Auditor-General, such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require. 50

(2) If the municipal manager is unable to comply with any of the responsibilities determined for municipal managers in this Part, the municipal manager must promptly 55 report the inability, together with reasons, to the municipal council, the National Treasury and the relevant provincial treasury.

*Part 2: Other officials of municipalities***Delegation of powers and duties by municipal managers**

- 40.** (1) The municipal manager of a municipality may in writing delegate any of the powers or duties entrusted or delegated to the municipal manager in terms of this Act, to an official in that municipality, except as limited by section 10 (2). 5
- (2) A delegation to an official in terms of subsection (1)—
- (a) is subject to any limitations and conditions as may be prescribed or as the National Treasury may impose in a specific case;
  - (b) may either be to a specific individual or to the holder of a specific post in the municipality; and 10
  - (c) does not divest the municipal manager of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (3) The municipal manager may confirm, vary or revoke any decision taken in consequence of a delegation in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision. 15

**Responsibilities of other officials of municipalities**

- 41.** An official of a municipality, subject to the directions of the municipal manager—
- (a) must ensure that the system of financial management and internal control established for that municipality is carried out within the area of responsibility of that official; 20
  - (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
  - (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised or irregular expenditure and any under collection of revenue due; 25
  - (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations in terms of section 40; and
  - (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility. 30

**CHAPTER 8****MUNICIPAL BUDGET AND TREASURY OFFICES****Establishment**

- 42.** (1) Every municipality must have a budget and treasury office. 35
- (2) A budget and treasury office consist of—
- (a) a chief financial officer designated by the municipal manager;
  - (b) staff allocated by the municipal manager to the chief financial officer; and
  - (c) any other persons contracted by the municipality for the work of the office.

**Role of the chief financial officer** 40

- 43.** (1) The chief financial officer of a municipality—
- (a) is administratively in charge of the budget and treasury office;
  - (b) must perform such budgeting, accounting, auditing, financial reporting, cash management, debt management, financial management and other functions as may be delegated by the municipal manager. 45
- (2) The chief financial officer of a municipality is accountable to the municipal manager for the performance of the functions referred to in subsection (1).

**Delegation of functions**

- 44.** (1) The chief financial officer of a municipality may in writing sub-delegate any of the functions referred to in section 43 (1) (b)— 50
- (a) to an official in the budgetary and treasury office;

- (b) to the holder of a specific post in that office;
  - (c) with the concurrence of the municipal manager, to—
    - (i) any other official of the municipality; or
    - (ii) any person contracted by the municipality for the work of the office.
- (2) If the chief financial officer sub-delegates in terms of subsection (1) any functions to a person who is not an official of the municipality, the chief financial officer must be satisfied that effective systems and procedures are in place to ensure control and accountability. 5
- (3) A sub-delegation in terms of subsection (1)—
- (a) is subject to any limitations or conditions that the chief financial officer may impose; and 10
  - (b) does not divest that chief financial officer of the responsibility concerning the delegated function.
- (4) The chief financial officer may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision. 15

## CHAPTER 9

### MUNICIPAL ENTITIES

#### *Part 1: General* 20

##### **Establishment of municipal entities**

45. (1) A municipality may establish a municipal entity only for—
- (a) the provision of a municipal service in the municipality or in an area of which the municipality forms part; or
  - (b) another purpose as may be prescribed. 25
- (2) A municipal entity may be established only as provided for in, and in accordance with, the Municipal Systems Act.
- (3) A municipality may not assign regulatory powers and functions to a municipal entity.
- (4) For the purposes of subsection (1) “establish” includes the acquisition of an ownership control interest in an existing company or other entity. 30

##### **List of municipal entities**

46. (1) Each municipality must annually within one month of the end of each financial year submit to the National Treasury, the relevant provincial treasury and the Auditor-General a list of— 35
- (a) all municipal entities under the sole or joint ownership control of the municipality as at the last day of the financial year; and
  - (b) any other undertakings in which the municipality obtained a financial interest during the financial year.
- (2) A list in terms of subsection (1) must be in the prescribed format and contain the prescribed particulars. 40

##### **Application of Act to multi-jurisdictional municipal service districts**

47. This Act, to the extent that it could be applied, applies to the governing body of a multi-jurisdictional municipal service district established in terms of Part 4 of Chapter 8 of the Municipal Systems Act as if that governing body is a municipal entity. 45

##### **Financial responsibilities of municipalities**

48. The municipality or municipalities exercising ownership control over a municipal entity must exercise those ownership control powers to ensure that the municipal entity complies with this Act and the financial policies of the municipality or municipalities.

### Service delivery agreements with municipal entities

**49.** (1) The service delivery agreement between a municipality and a municipal entity must, in addition to the matters mentioned in section 81 of the Municipal Systems Act, contain such other matters as may be prescribed.

(2) When a municipality enters into a service delivery agreement with a municipal entity, a copy of the agreement must be submitted to the National Treasury and the relevant provincial treasury. 5

### Disposal of assets by municipal entities

**50.** (1) A municipal entity may not sell, transfer ownership or otherwise permanently dispose of an asset needed to provide a minimum essential municipal service. 10

(2) A municipal entity may sell, transfer, or otherwise dispose of an asset other than an asset described in subsection (1) only after the council of the municipality exercising sole or joint ownership control over the municipal entity, in a meeting open to the public, has—

(a) on reasonable grounds decided that the asset is not needed to provide a minimum essential municipal service; and 15

(b) considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a municipal council that a specific asset is not needed to provide a minimum essential municipal service, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of. 20

### *Part 2: Governing boards or bodies of municipal entities*

#### Application of this Part

**51.** This Part applies to all municipal entities which in terms of the legislation under which the entity has been established are required to have a governing board or body. 25

#### Skills for members of governing boards or bodies

**52.** (1) The municipality or municipalities exercising ownership control of a municipal entity must ensure that the governing board or body of the entity has the appropriate range of skills and expertise to effectively manage and guide the activities of the entity. 30

(2) A person appointed or nominated for appointment by a municipal council as a member of a governing board or body must have requisite skills and expertise in the services to be rendered as such a member.

(3) A councillor may be appointed or nominated for appointment by a municipal council as a member of a governing board or body but only in exceptional circumstances and provided the person appointed or nominated— 35

(a) complies with subsection (2); and

(b) is not an employee of the municipal entity concerned.

(4) The number of councillors and the number of officials on a governing board or body may not exceed a prescribed limit. 40

#### Selection process

**53.** (1) A person is appointed to the governing board or body of a municipal entity in accordance with the legislation in terms of which the entity has been established, as modified by the provisions of this Act.

(2) Whenever it is necessary for a municipality to select a person for nomination or appointment as a member of a governing board or body, the municipal manager must— 45

(a) through advertisements in the media circulating in the area of the municipality, invite applications for such nomination or appointment;

(b) compile a list of the names of applicants, setting out the prescribed particulars of each individual applicant; and 50

(c) submit the list to the municipal council together with a recommendation on the matter, taking into account the provisions of section 52.

- (3) Any application made pursuant to an advertisement in terms of subsection (2) (a) must be supported by—
- (a) the personal details of the applicant;
  - (b) particulars of the applicant's qualifications or experience; and
  - (c) any other information that may be prescribed. 5
- (4) The municipal council must make its selection from the list submitted in terms of subsection (2) (c).
- (5) If the municipal council is unable to select a suitable person from the list, the council may select any person of its choice, taking into account the provisions of section 52. 10

#### **Fiduciary duties of governing boards or bodies**

- 54.** (1) The governing board or body of a municipal entity must—
- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the municipal entity;
  - (b) act with fidelity, honesty, integrity and in the best interests of the municipal entity in managing the financial affairs of the entity; 15
  - (c) on request, disclose to the municipality or municipalities exercising ownership control over that municipal entity, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the affected municipality or municipalities; and 20
  - (d) seek, within the sphere of influence of that governing board or body, to prevent any prejudice to the financial interests of the affected municipality or municipalities.
- (2) A member of the governing board or body of a municipal entity may not use the position or privileges of, or confidential information obtained as, a member of the board or body, for personal gain or to improperly benefit another person. 25
- (3) A member of the governing board or body of a municipal entity must—
- (a) disclose to that board or body any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the board or body; and 30
  - (b) withdraw from the proceedings of the board or body when that matter is considered, unless the board or body decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

#### **Compensation for serving on governing boards or bodies**

- 55.** (1) The municipal manager of a municipality exercising sole or joint ownership control over a municipal entity must disclose by way of a notice in a newspaper circulating in the municipality, particulars of the compensation package payable to persons as members of the governing board or body of the entity. 35
- (2) A councillor or official of a municipality may not receive compensation for serving on the governing board or body of a municipal entity under the sole or joint ownership control of that municipality. 40
- (3) Subsection (2) does not prevent the payment of allowances to councillors or officials to reimburse them for their reasonable expenses relating to their work as members of a governing board or body.

#### **Meetings of governing boards and bodies** 45

- 56.** Meetings of the governing board or body of a municipal entity must be open to the public, including the media, and such board or body may not exclude the public, including the media, from a meeting, except when it is reasonable to do so having regard to the nature of the business being transacted.

### ***Part 3: Accounting authorities*** 50

#### **Accounting authorities**

- 57.** (1) Every municipal entity must have an accounting authority, which must be accountable for the purposes of this Act.
- (2) If the municipal entity—

- (a) has a chief executive officer, that person is the accounting officer for that entity; or
- (b) does not have a chief executive officer, the governing board or body of the entity is the accounting authority for that entity.
- (3) The National Treasury may— 5
  - (a) in exceptional circumstances, approve or instruct that another official of the entity must be the accounting authority for that entity; or
  - (b) at any time withdraw an approval or instruction in terms of paragraph (a).
- (4) A municipal entity must inform the Auditor-General promptly and in writing of any approval or instruction in terms of subsection (3) (a) and any withdrawal of an approval or instruction in terms of subsection (3) (b). 10
- (5) To the extent that the accounting authority of a municipal entity is in terms of this Act accountable to the municipality exercising sole or joint ownership control over the entity, the accounting authority must discharge that responsibility through the municipal manager of the municipality. 15

### General responsibilities of accounting authorities

- 58.** (1) The accounting authority for a municipal entity—
- (a) must ensure that that entity has and maintains—
    - (i) effective, efficient and transparent systems of financial and risk management and internal control; 20
    - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of section **104**;
    - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and 25
    - (iv) a system through which capital projects are properly evaluated on the basis of their financial, economic and social impact prior to a final decision on the project;
  - (b) must keep full and proper records of the financial affairs of the entity;
  - (c) must take effective and appropriate steps to— 30
    - (i) collect all revenue due to the entity concerned; and
    - (ii) prevent irregular expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the entity; and
    - (iii) manage available working capital efficiently and economically; 35
  - (e) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the entity;
  - (f) must without delay report to the South African Police Service all— 40
    - (i) irregular expenditures that may constitute a criminal offence; and
    - (ii) other losses resulting from criminal conduct;
  - (g) must compile a budget annually and submit it to the entity's governing board or body for approval.
  - (h) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation; 45
  - (i) must take effective and appropriate disciplinary steps against any employee of the entity who—
    - (i) contravenes or fails to comply with a provision of this Act;
    - (ii) commits an act which undermines the financial management and internal control system of the entity; or 50
    - (iii) makes or permits an irregular expenditure;
  - (j) is responsible for the submission by the entity of all reports, returns, notices and other information to the municipal council, as may be required by this Act;
  - (k) must promptly inform the municipal manager who in turn must promptly inform the National Treasury and the relevant provincial treasury on any new entity which that entity intends to acquire or establish or in the establishment of which it takes the initiative; and 55
  - (l) must comply, and ensure compliance by the entity, with the provisions of this Act and any other legislation applicable to the entity. 60

(2) If an accounting authority is unable to comply with any of the responsibilities in this Act, the accounting authority must promptly report the inability, together with reasons, to the council of the municipality exercising sole or joint ownership control over the entity.

#### **Information to be submitted by accounting authorities** 5

**59.** The accounting authority of a municipal entity must submit to the municipal manager of the municipality exercising sole or joint ownership control over the entity, the National Treasury, the relevant provincial treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the municipality, the relevant treasury or the Auditor-General may require. 10

#### *Part 4: Other officials of municipal entities*

#### **Delegation of powers and duties by accounting authorities**

**60.** (1) The accounting authority of a municipal entity may delegate, in writing, any of the powers or duties entrusted or delegated to the accounting authority in terms of this Act, to an official of that entity. 15

(2) A delegation in terms of subsection (1)—

- (a) is subject to any limitations and conditions the accounting authority may impose;
- (b) may be either to a specific individual or to the holder of a specific post in the municipal entity; and 20
- (c) does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) An accounting authority may confirm, vary or revoke any decision taken by an official in consequence of a delegation in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision. 25

#### **Responsibilities of other officials**

**61.** (1) An official in a municipal entity—

- (a) must ensure that the system of financial management and internal control established for that entity is carried out within the area of responsibility of that official; 30
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and any under collection of revenue due; 35
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations in terms of section 60; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility. 40

(2) When complying with subsection (1), an official is bound by the system of financial management and internal control established by the accounting authority of the municipal entity.

#### *Part 5: Business plans, budgets, loans and guarantees* 45

#### **Business plans**

**62.** (1) Each municipal entity must adopt an annual or multi-year plan for the entity that—

- (a) includes its financial plan;
- (b) is consistent with the budget or budgets of the municipality or municipalities exercising ownership control over the entity; 50
- (c) sets key performance objectives and measurement criteria;

- (d) reflects actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates; and
  - (e) complies with the other provisions of this Act.
- (2) A municipal entity must submit its business plan to the municipality or municipalities exercising ownership control over it, for approval. 5

#### **Expenditure of municipal entities**

- 63.** (1) Expenditure of a municipal entity must be in accordance with business plan approved by the council of the municipality exercising sole or joint ownership control over the entity. 10
- (2) The accounting authority of a municipal entity must submit the business plan of the entity to the relevant municipality or municipalities for approval at least six months before the start of the financial year to which that budget relates.

#### **Borrowing of money**

- 64.** A municipal entity may borrow money but only in accordance with a business plan approved by the council of the municipality exercising sole or joint ownership control over it. 15

### **CHAPTER 10**

#### **FINANCIAL REPORTING AND AUDITING**

##### *Part 1: Annual financial statements* 20

##### *Municipalities not having sole ownership control over municipal entities*

#### **Preparation of annual reports and financial statements**

- 65.** (1) The municipal manager of a municipality that does not have sole ownership control over any municipal entity must for each financial year prepare— 25
- (a) a report on the activities of the municipality during that financial year; and
  - (b) financial statements for the municipality in accordance with generally recognised accounting practice.
- (2) The annual report and audited financial statements referred to in subsection (1) must—
- (a) fairly present the state of affairs of the municipality, its business, its financial results, its performance against prescribed financial management performance indicators and its financial position as at the end of the financial year concerned; 30
  - (b) reflect year end balances in all bank accounts established by the municipality in terms of section 7; 35
  - (c) reflect particulars of any financial interest the municipality may have in any other undertakings, including in a municipal entity under the joint ownership control of the municipality; and
  - (d) include particulars of— 40
    - (i) any material losses through criminal conduct and any unauthorised or irregular expenditures that occurred during the financial year; 40
    - (ii) any criminal or disciplinary steps taken as a result of such losses or unauthorised or irregular expenditures;
    - (iii) any material losses recovered or written off;
    - (iv) councillor benefits, whether financial or in kind; 45
    - (v) any arrears owed by councillors to the municipality; and
    - (vi) any other matters that may be prescribed.

#### **Auditing of financial statements**

- 66.** (1) The municipal manager must, within two months after the end of the financial year, submit the financial statements prepared in terms of section 65 (1) (b) to the Auditor-General for auditing. 50

- (2) The Auditor-General must—
- (a) audit those financial statements; and
  - (b) submit an audit report on those statements to the municipal manager within three months of receipt of the statements.

**Tabling of annual report, financial statements and audit report** 5

- 67.** (1) The municipal manager, within one month of receiving the Auditor-General's audit report, must—
- (a) table in the municipal council the annual report, a copy of the financial statements and the audit report; and
  - (b) submit to the National Treasury and the relevant provincial treasury— 10
    - (i) copies of the annual report, the financial statements and the audit report; and
    - (ii) particulars of any corrective action taken in response to the findings of the audit report.
- (2) Representatives of the Auditor-General, the National Treasury, the relevant provincial treasury and the provincial department responsible for local government matters in the province are entitled to attend, and to speak at, any meeting of the municipal council at which the financial statements and the audit report are tabled or discussed or at which decisions concerning the financial statements and the audit report are to be taken. 20
- (3) The municipal manager must—
- (a) give written notice of such meetings to the Auditor-General, the National Treasury, the relevant provincial treasury and the relevant provincial department;
  - (b) attend such meetings for the purpose of responding to questions concerning the financial statements and audit report; and 25
  - (c) submit copies of the minutes of these meetings to the Auditor-General, the relevant provincial treasury and the relevant provincial department.
- (4) The financial statements and audit report must be made public when tabled in the municipal council. 30

*Municipal entities*

**Preparation of annual reports and financial statements**

- 68.** (1) The accounting authority of a municipal entity must for each financial year prepare—
- (a) a report on the activities of the entity during that financial year; and 35
  - (b) financial statements for the entity in accordance with generally recognised accounting practice, unless the Accounting Standards Board approves another accounting standard for that entity.
- (2) The annual report and financial statements referred to in subsection (1) must—
- (a) fairly present the state of affairs of the municipal entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; 40
  - (b) reflect particulars of any financial interest the entity may have in any other undertakings;
  - (c) include particulars of— 45
    - (i) any losses through criminal conduct and any irregular expenditure that occurred during the financial year;
    - (ii) any criminal or disciplinary steps taken for such losses or irregular expenditure;
    - (iii) any losses recovered or written off; 50
    - (iv) any financial assistance received from any organ of state in any sphere of government and commitments made by any organ of state on its behalf;
    - (v) any contingent liabilities for the municipality or municipalities exercising ownership control over the entity; and
    - (vi) any other matters that may be prescribed; 55
  - (d) if the municipal entity is a company, include the financial statements of any subsidiaries.

**Auditing of financial statements**

- 69.** (1) The accounting authority of a municipal entity must, within one month after the end of the financial year, submit the financial statements prepared in terms of section 68 (1) (b) to—
- (a) the auditors of the entity for auditing; and 5
  - (b) the municipality or municipalities exercising ownership control over that entity.
- (2) The auditors must—
- (a) audit those financial statements; and
  - (b) within three months of receipt of the financial statements, submit an audit report on those statements to the municipal entity. 10

**Submission of annual report, financial statements and audit reports**

- 70.** The accounting authority of a municipal entity must, within one month after receiving the report of the auditors on those financial statements, submit to the municipality or municipalities exercising ownership control over that entity, and, if the Auditor-General did not perform the, also to the Auditor-General— 15
- (a) the annual report of the entity;
  - (b) the financial statements for that financial year; and
  - (c) the report of the auditors on those statements.

*Municipalities having sole ownership control over municipal entities* 20

**Preparation of annual reports and financial statements**

- 71.** (1) The municipal manager of a municipality that does have sole ownership control over one or more municipal entities must for each financial year prepare—
- (a) a report on the activities of the municipality during that financial year; and
  - (b) in accordance with generally recognised accounting practice consolidated financial statements in respect of— 25
    - (i) the municipality; and
    - (ii) all municipal entities under the sole ownership control of the municipality.
- (2) The annual report and consolidated financial statements referred to in subsection (1) must— 30
- (a) fairly present the state of affairs of the municipality and the municipal entities under the sole ownership control of the municipality, their business, their financial results, their performance against prescribed financial management performance indicators and their financial position as at the end of the financial year concerned; 35
  - (b) reflect year end balances in all bank accounts established by the municipality in terms of section 7;
  - (c) reflect in those statements any financial interest the municipality or any such municipal entity may have in any other undertakings, including in a municipal entity under the joint ownership control of the municipality; and 40
  - (d) include particulars of—
    - (i) any material losses through criminal conduct, any unauthorised or irregular expenditure by the municipality and any irregular expenditure by any such municipal entities under the sole ownership control of the municipality, which occurred during the financial year; 45
    - (ii) any criminal or disciplinary steps taken as a result of such losses, unauthorised expenditure or irregular expenditure;
    - (iii) any material losses recovered or written off;
    - (iv) councillor benefits, whether financial or in kind; 50
    - (v) any arrears owed by councillors to the municipality; and
    - (vi) any other matters that may be prescribed.

**Auditing of financial statements**

- 72.** (1) The municipal manager of a municipality must, within two months after the end of the financial year, submit the consolidated financial prepared in terms of section 71 (1) (b) to the Auditor-General for auditing.
- (2) The Auditor-General must— 5
- (a) audit the consolidated financial statements; and
  - (b) submit an audit report on those statements to the municipality within three months of receipt of the statements.

**Tabling of annual report, financial statements and audit report**

- 73.** (1) The municipal manager, within one month of receiving the audit report from the Auditor-General, must— 10
- (a) table in the municipal council—
    - (i) the annual report;
    - (ii) a copy of the consolidated financial statements; and
    - (iii) the audit report; and 15
  - (b) submit to the National Treasury and the relevant provincial treasury—
    - (i) copies of the annual report, the consolidated financial statements and the audit report; and
    - (ii) particulars of any corrective action taken in response to the findings of the audit report. 20
- (2) Representatives of the Auditor-General, the National Treasury, the relevant provincial treasury and the provincial department responsible for local government matters in the province are entitled to attend and to speak at a meeting of the municipal council, which shall be open to the public, at which the consolidated financial statements and the audit report are tabled or discussed or at which decisions concerning the consolidated financial statements and the audit report are to be taken. 25
- (3) The municipal manager must—
- (a) give written notice of such meetings to the Auditor-General, the National Treasury, the relevant provincial treasury and the relevant provincial department; 30
  - (b) attend such meetings for the purpose of responding to questions concerning the financial statements and audit report; and
  - (c) submit copies of the minutes of these meetings to the Auditor-General, the relevant provincial treasury and the relevant provincial department.
- (4) The consolidated financial statements and audit report must be made public when tabled in the municipal council. 35

**General****Submission of financial statements and audit report to provincial legislatures**

- 74.** (1) The Auditor General must, without delay, submit copies of a municipality's financial statements or consolidated financial statements, and the audit report on those statements to the relevant provincial legislature. 40
- (2) A provincial legislature may deal with the documents referred to it in terms of subsection (1) in accordance with its constitutional powers.

**Consequences of non-compliance with certain provisions**

- 75.** If the municipal manager fails to submit financial statements to the Auditor-General in terms of section 66 (1) or 72 (1), or fails to table financial statements and the Auditor-General's audit report on those statements in the municipal council in terms of section 67 (1) or 73 (1)— 45
- (a) the municipal manager must promptly table in the council a written explanation setting out the reasons for the failure; 50
  - (b) the Auditor-General, in the case of any failure to submit financial statements for auditing—
    - (i) may issue a special report on the delay to the relevant provincial legislature; and

- (ii) must comment on whether there are grounds for financial misconduct or criminal sanctions; and
- (c) the Minister, after consulting the Cabinet member responsible for local government, may withhold the transfer of funds from the National Revenue Fund to the municipality. 5

#### **Assessment of Auditor-General's queries**

- 76.** The MEC for local government must—
- (a) assess all financial statements and determine whether the municipality has addressed any queries the Auditor-General may have raised; and
  - (b) report to the provincial legislature any omission by a municipality to adequately address such queries. 10

#### **Annual report to Parliament**

- 77.** The Minister responsible for local government must annually report to Parliament on actions taken by MECs for local government to address audit queries on financial statements by the Auditor-General. 15

### *Part 2: Auditing of municipalities*

#### **Audit requirements**

- 78.** (1) The annual financial statements of all municipalities must annually be audited by the Auditor-General as required by section 188 of the Constitution.
- (2) An audit referred to in subsection (1) is performed in terms of the Auditor-General Act, 1995 (Act 12 of 1995). 20
- (3) The Auditor-General must render an opinion on compliance with this Act.

#### **Withholding of funds**

- 79.** If a municipality fails within a period determined by the National Treasury to take adequate steps to rectify any adverse findings of the Auditor-General in a report referred to in sections 66 (2) and 72 (2), the Minister may withhold the transfer of funds from the National Revenue Fund to the municipality. 25

### *Part 3: Auditing of municipal entities*

#### **Appointment of auditors**

- 80.** (1) The annual financial statements of a municipal entity must be audited annually by— 30
- (a) the Auditor-General; or
  - (b) a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as an accountant and auditor, and engaged in public practice as such. 35
- (2) If the Auditor-General does not perform the audit, a municipal entity—
- (a) may appoint any person referred to in subsection (1) (b) as its auditor; and
  - (b) must give notice of such appointment to the Auditor-General and the municipality or municipalities exercising ownership control over it.
- (3) The Auditor-General may— 40
- (a) either on own initiative or at the request of the municipality or municipalities exercising ownership control over the relevant municipal entity, reject an auditor appointed in terms of subsection (2); and
  - (b) appoint a different auditor.

#### **Discharge of auditors** 45

- 81.** (1) A municipal entity may discharge an auditor appointed by it in terms of section 80 (2) (a) before the expiry of that auditor's term of appointment but only with the approval of—

- (a) the municipality or municipalities exercising ownership control over that municipal entity; and
- (b) the Auditor-General.
- (2) An auditor appointed in terms of section 80 (3) (b) may be discharged only in terms of the Auditor-General Act, 1995 (Act No. 12 of 1995). 5
- (3) If a municipal entity intends discharging an auditor in terms of subsection (1), it must—
  - (a) give the auditor notice, in writing, setting out the reasons for the discharge; and
  - (b) give the auditor an opportunity to make representations, in writing, to the municipality or municipalities exercising ownership control over that municipal entity and the Auditor-General within 20 days of receipt of the notice. 10
- (4) The Auditor-General must report any discharge of an auditor in terms of subsection (1) to the provincial legislature concerned. 15

#### Duties and powers of auditors

- 82.** (1) An auditor appointed in terms of section 80 (2) (a) or (3) (b) must perform the functions of office as auditor in terms of legislation applicable to that person as auditor.
- (2) In exercising the powers and performing the duties as auditor of a municipal entity, the auditor— 20
- (a) has access at all reasonable times to all records, including books, vouchers, documents, plans and other property of the municipal entity;
  - (b) may require from the accounting authority for that municipal entity such information and explanations as are necessary for the purpose of the audit; and
  - (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management. 25
- (3) An auditor appointed in terms of section 80 (2) (a) or (3) (b) may consult the Auditor-General or any person in the Office of the Auditor-General concerning any matter relating to the auditing of the municipal entity concerned.
- (4) An auditor appointed in terms of section 80 (2) (a) or (3) (b)— 30
- (a) must be given notice of every meeting of the municipal entity's audit committee; and
  - (b) may attend, and participate in, any meeting of the audit committee at the expense of the municipal entity.

#### Reports of auditor 35

- 83.** (1) The report of an auditor appointed in terms of section 80 (2) (a) or (3) (b) must state separately in respect of each of the following matters whether in the auditor's opinion—
- (a) the annual financial statements of the municipal entity fairly present the financial position, financial results and cash flow of the entity in accordance with section 68 (1) (b) applied on a basis consistent with that of the preceding year; 40
  - (b) the performance information furnished in terms of subsection 68 (2) (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and 45
  - (c) the transactions that had come to the auditor's attention during auditing were in all material respects in accordance with the mandatory functions of the municipal public entity determined by law or otherwise.
- (2) The auditor—
- (a) must report to the council or councils of the municipality or municipalities exercising ownership control over the municipal entity concerned, the results of any investigation carried out under section **82 (2) (c)**; and 50
  - (b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should be disclosed. 55
- (3) The auditor must submit copies of the report to—
- (a) the municipal entity concerned;
  - (b) the municipality or municipalities exercising ownership control over that municipal entity;

- (c) the National Treasury;
- (d) the relevant provincial treasury; and
- (e) the relevant provincial legislature.

#### **Investigations and special audits by Auditor-General**

- 84.** (1) The Auditor-General may carry out an appropriate investigation or special audit of any municipal entity if the Auditor-General considers it to be in the public interest or upon the receipt of a credible complaint. 5
- (2) The Auditor-General may appoint a person to carry out an investigation or special audit in terms of section (1) on behalf of the Auditor-General.
- (3) If the Auditor-General issues a special report on an investigation or special audit in terms of subsection (1) or (2)— 10
- (a) the report must promptly be tabled in the council or councils of the municipality or municipalities exercising ownership control over the municipal entity concerned; and
  - (b) the Auditor-General must submit a copy of the report to— 15
    - (i) the National Treasury;
    - (ii) the relevant provincial treasury; and
    - (iii) the relevant provincial legislature.
- (4) The Auditor-General may claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the municipal entity concerned, or, in the case of non-payment by the municipal entity, from the municipality or municipalities exercising ownership control over the municipal entity. 20

#### **Accountability of municipal entities**

- 85.** The Auditor-General may annually report to Parliament and the provincial legislatures on specific and general findings regarding the accountability of municipal entities. 25

### **CHAPTER 11**

#### **FINANCIAL EMERGENCIES**

*Note: Section 86 to 103 have been removed and included in annexure A. Its form and content may change depending on the adoption and final wording of a proposed constitutional amendment currently before Parliament. It is intended that these sections will be inserted upon the approval of the constitutional amendments.* 30

### **CHAPTER 12**

#### **GENERAL TREASURY MATTERS**

#### **Treasury regulations, instructions and guidelines** 35

- 104.** (1) The National Treasury may make regulations or issue instructions or guidelines applicable to municipalities and municipal entities, concerning—
- (a) any matter that may be prescribed for municipalities or municipal entities in terms of this Act;
  - (b) financial management and internal control; 40
  - (c) a framework for the exercise of municipal fiscal and tariff fixing powers;
  - (d) a framework for a procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
  - (e) a framework for public private partnership agreements;
  - (f) the establishment by municipalities of, and control over, municipal entities and business units created by a municipality; 45
  - (g) the transfer of assets from a municipality to a municipal entity under its ownership control or from such entity to a municipality;
  - (h) the alienation, letting or disposal of assets by municipalities;
  - (i) audit committees, their appointment and their functioning; 50
  - (j) internal audit components and their functioning;
  - (k) costing framework for municipal activities;

- (l) the information to be disclosed when a municipality or municipal entity incurs debt;
  - (m) the compulsory disclosure of material facts by, and duties of reasonable enquiry of, councillors, officials of municipalities or municipal entities, lenders, brokers, underwriters and other persons when a municipality or municipal entity incurs debt; 5
  - (n) the prospectus or prescribed documents required for the issuing or trading of municipal debt instruments;
  - (o) the circumstances under which further or specific disclosures are required after money has been borrowed by a municipality or public entity; 10
  - (p) specific facts to be disclosed upon the occurrence of events material to decisions of prospective lenders and investors;
  - (q) the circumstances under which documentation or information pertaining to municipal debt need to be lodged or registered;
  - (r) the establishment of a registry for the registration of prescribed documentation and information pertaining to municipal borrowing; 15
  - (s) the administration of this Act; and
  - (t) any other matter that may facilitate the application of this Act.
- (2) The National Treasury may by regulation determine that a contravention of, or failure to comply with, a specific regulation in terms of subsection (1) is an offence and that a person found guilty of such an offence is liable to an appropriate fine or to imprisonment not exceeding one year. 20
- (3) A regulation, instruction or guideline in terms of this section may—
- (a) differentiate between different—
    - (i) kinds of municipalities, which may, for the purposes of this section be defined either in relation to categories or types of municipalities or in any other way; 25
    - (ii) categories of municipal entities;
    - (iii) category of municipal managers;
    - (iv) category of accounting authorities; or 30
    - (v) category of officials; or
  - (b) be limited in its application to a particular—
    - (i) kind of municipality, which may, for the purposes of this section be defined either in relation to a category or type of municipality or in any other way; 35
    - (ii) category of municipal entities;
    - (iii) category of municipal managers;
    - (iv) category of accounting authorities; or
    - (v) category of officials.

#### **Audit committees** 40

**105.** (1) An audit committee must—

- (a) consist of at least three persons of whom at least the majority may not be in the employ of the municipality or municipal public entity, as the case may be; and
- (b) meet at least twice a year.

(2) A single audit committee may be appointed for a district municipality and the local municipalities within that district municipality. 45

#### **Publishing of draft treasury regulations for public comment**

**106.** Draft regulations in terms of section 104 must be published for public comment in the national *Government Gazette* before their enactment.

#### **Departures from treasury regulations, instructions or conditions** 50

**107.** The National Treasury may on good grounds approve a departure from a treasury regulation or instruction or any condition imposed in terms of this Act.

## CHAPTER 13

## FINANCIAL MISCONDUCT

*Part 1: Disciplinary proceedings***Financial misconduct by municipal officials**

- 108.** (1) The municipal manager of a municipality commits an act of financial misconduct if that municipal manager wilfully or negligently— 5
- (a) fails to comply with a requirement of section 22, 35, 36, 39, 65 or 71; or
  - (b) makes or permits an unauthorised or irregular expenditure.
- (2) An official of a municipality to whom a power or duty is assigned in terms of section 40 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty. 10

**Financial misconduct by accounting authorities and officials of municipal entities**

- 109.** (1) The accounting authority of a municipal entity commits an act of financial misconduct if that accounting authority wilfully or negligently— 15
- (a) fails to comply with a requirement of section 58, 59 or 68; or
  - (b) makes or permits an irregular expenditure.
- (2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.
- (3) An official of a municipal entity to whom a power or duty is assigned in terms of section 60 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty. 20
- (4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation. 25

**Applicable legal regime for disciplinary proceedings**

- 110.** A charge of financial misconduct against a municipal manager or an official referred to in section 108 (2) or 109 (2) or an accounting authority or a member of an accounting authority or an official referred to in section 109 (3), must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that municipal manager or authority, or member or official, and any regulations made by the Minister in terms of section 111. 30

**Regulations on financial misconduct procedures**

- 111.** (1) The Minister may make regulations prescribing—
- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General, including— 35
    - (i) particulars of the alleged financial misconduct; and
    - (ii) the steps taken in connection with such financial misconduct; 40
  - (b) matters relating to the investigation of allegations of financial misconduct;
  - (c) the circumstances in which the National Treasury or the relevant provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;
  - (d) the criteria for the composition of a disciplinary board which hears a charge of financial misconduct; 45
  - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and
  - (f) any other matters to the extent necessary to facilitate the object of this Chapter. 50
- (2) A regulation in terms of subsection (1) may—
- (a) differentiate between different—

- (i) kinds of municipalities, which may, for the purposes of this section be defined either in relation to categories or types of municipalities or in any other way;
- (ii) categories of municipal entities;
- (iii) categories of municipal managers; 5
- (iv) categories of accounting authorities; or
- (v) categories of officials; or
- (b) be limited in its application to a particular—
  - (i) kind of municipality, which may, for the purposes of this section be defined either in relation to a category or type of municipality or in any other way; 10
  - (ii) category of municipal entities;
  - (iii) category of municipal managers;
  - (iv) category of accounting authorities; or
  - (v) category of officials. 15

### *Part 2: Criminal proceedings*

#### **Offences and penalties**

- 112.** (1) A municipal manager of a municipality is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that municipal manager wilfully or in a grossly negligent way fails to comply with a provision of section 22, 35, 36 or 39. 20
- (2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 58 or 59. 25
- (3) An official of a municipality or municipal entity to whom a power or duty was delegated in terms of section 40 or 60, is guilty of an offence if that official wilfully or in a grossly negligent way fails to comply with a condition of the delegation.
- (4) A councillor of a municipality is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that councillor— 30
- (a) influences the municipal manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act; or
  - (b) without a mandate from the council interferes in the financial management of the municipality. 35
- (5) A person is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that person—
- (a) wilfully gives incorrect, untrue or misleading information material to an investment decision relating to municipal borrowing;
  - (b) contravenes a provision of section 24 (4); 40
  - (c) fails to comply with section 28;
  - (d) makes a withdrawal in contravention of section 11.

## **CHAPTER 14**

### **MISCELLANEOUS**

#### **Limitation of liability** 45

**113.** No person is liable in respect of anything done in good faith under this Act.

#### **Exemptions**

- 114.** (1) The Minister, by notice in the national *Government Gazette*, may exempt any municipality or municipal entity from any specific provision of this Act for a period and on conditions determined in the notice. 50
- (2) An exemption in terms of subsection (1) may—
- (a) apply to—
    - (i) municipalities generally; or
    - (ii) municipal entities generally; or

- (b) be limited in its application to a particular—
  - (i) municipality;
  - (ii) kind of municipality, which may, for the purposes of this section be defined either in relation to a category or type of municipality or in any other way; 5
  - (iii) municipal entity; or
  - (iv) category of municipal entities.

### Transitional provisions

**115.** (1) Anything done in terms of a provision repealed by section 116 (1), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act. 10

(2) All municipalities must within three months of the date on which this section takes effect, submit to the National Treasury a list of all municipal and other corporate entities in which the municipality has an interest, specifying— 15

- (a) the name and address of the entity;
- (b) the purpose, extent and other particulars of the interest;
- (c) whether the entity is under the sole or joint ownership control of the municipality; and,
- (d) other information as may be required by the National Treasury.

(3) If a municipality or a municipal entity or a subsidiary of a municipal entity holds an interest in any company or other entity in contravention of section 14, it must dispose of such interest within two years as from the date on which this Act took effect. 20

(4) Section 24 (4)—

- (a) only applies from a date determined by the Minister by notice in the *Gazette*; and 25
- (b) only applies to the extent prescribed during the period of two years commencing from the date determined in terms of paragraph (a).

### Amendment of legislation

**116.** (1) The Municipal Accountant Act (Act.. of 19..), section 10G of the Local Government Transition Act, 1993 (Act 209 of 1993), and section 17 (d) of the Promotion of Local Government Act are hereby repealed. 30

(2) Section 18 of the Municipal Structures Act is hereby amended by the addition of the following subsection:

“(5) A municipal council may, with the approval of the MEC for local government acting within a framework prescribed in terms of the Local Government: Municipal Finance Management Act, 2002, determine the remuneration, allowances and other benefits of councillors.” 35

(3) Schedule 1 of the Municipal Systems Act is hereby amended by—

- (a) the insertion in item 11 after paragraph (a) of the following paragraphs: 40
  - “(aA) interfere in the financial management responsibilities and functions assigned in terms of the Local Government: Municipal Finance Management Act, 2002, to the municipal manager or chief financial officer of the municipality;
  - (aB) interfere in the actions of the municipal manager relating to the appointment, promotion, discipline, transfer or dismissal of staff;”;
- (b) the insertion after item 6 of the following item: 45

#### “Rates, tariffs and rent payable by councillors

**6A.** (1) A councillor must promptly and diligently pay all rates, tariffs, rent and other money due to the municipality.

- (2) The municipal manager must notify the speaker of the council and the MEC for local government in writing if a councillor is in arrear with any of these payments for a period of longer than 30 days.”; and 50
- (c) the insertion after item 12 of the following item:

**“Duty of municipal manager to report alleged breaches of the Code**

**12A.** (1) If a municipal manager, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the municipal manager must report the alleged breach to the speaker of the council and the MEC for local government. 5

(2) Any action taken against a municipal manager because of that municipal manager’s compliance with subitem (1), is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).”.

**Short title and commencement** 10

**117.** (1) This Act is called the Local Government: Municipal Finance Management Act, 2001, and takes effect on 1 July 2002 except those provisions determined by the Minister by notice in the national *Government Gazette*, which will take effect on a date determined in the notice.

(2) Different dates may in terms of subsection (1) be determined for different provisions of the Act. 15

(3) The Minister may by notice in the national *Government Gazette* phase in the application of the provisions of this Act, and determine different dates on which different provisions of this Act will become applicable to municipalities of different categories, types or kinds. 20

## MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT BILL

### Introduction

Local government financial management is currently contained in section 10G of the Local Government Transition Act, Act 209 of 1993 (LGTA). This section which regulated municipal finances during the transitional phase will be replaced by this Bill. As such the Bill is a critical element in the final transformation of local government that is currently underway within the policy framework established by the White Paper on Local Government and the various pieces of legislation that emanated from the White Paper.

Section 216 of the Constitution envisages uniform treasury norms and standards for all spheres of government. Norms and standards for financial management in the national and provincial spheres of government were provided by way of the Public Finance Management Act, 1999 (Act 1 of 1999), which was implemented on 1 April 2000. The Municipal Finance Management Bill will provide uniform treasury norms and standards for the local sphere of government.

### Content

The purpose of the Municipal Finance Management Bill is fivefold:

- \* To regulate municipal financial management;
- \* To set requirements for the efficient and effective management of the revenue, expenditure, assets and liabilities of municipalities and municipal entities;
- \* To define responsibilities with regard to municipal financial management;
- \* To determine a financial management governance framework for municipal entities; and
- \* To put in place a municipal borrowing framework.

The Bill covers the following areas:

**Chapter 1** provides definitions of key terms and concepts used in the Bill, outlines the scope of the legislation, and determines the conditions under which amendments to the legislation may be made.

**Chapter 2** deals with the intergovernmental aspects of local government financial management. It defines the major relationships between the different spheres of government as they pertain to municipal financial management. The provisions in this chapter enable national and provincial government to monitor and regulate local government finances, to prescribe relevant norms and standards for municipalities and to delegate powers.

**Chapter 3** sets out conditions for municipal revenue and investments. It requires each municipality to establish bank accounts into which all monies received by municipalities must be paid. The municipal manager is made accountable for these accounts and must ensure compliance with the relevant requirements in the legislation. Various procedures are outlined for the control, withdrawal and investment of funds. The National Treasury is granted powers to prescribe a framework for municipal cash management and the management of investments by municipalities.

**Chapter 4** defines a process of annual budgeting for municipalities (within a framework of multi-year budgeting), including provisions for regular reporting to their councils and the national and provincial governments. The guiding principle is that municipalities will assume responsibility for detailed budgeting, within a nationally determined macro-economic framework. Provision is made for budget adjustments and for the shifting of funds between budget votes in the course of a municipality's financial year, subject to certain reporting requirements. Limitations—based on the previous year's budget—are placed on municipalities' expenditures in the event of them not having approved their budgets. The provisions regarding budgets and budgeting aim to establish a clear link between the assignment of functions to municipalities and the allocation of resources to such bodies. Councils are made ultimately responsible for approving budgets, within the framework set for intergovernmental relations around financial management in the local sphere of government.

**Chapter 5** deals with the borrowing of money by municipalities. It limits short-term borrowing to bridging operating cash shortfalls or to bridge capital requirements, on the basis of anticipated income streams, grants or long term debt in waiting. It requires that short-term debt be paid off annually. Long-term borrowing is limited to funding of capital investment. It also sets requirements for the authorisation of municipal debt, without national or provincial approval and spells out the conditions for providing security. The Chapter rules out guarantees of municipal debt by national and provincial governments, other than what is provided for in the Public Finance Management Act. Disclosure requirements for the borrowing of money by a municipality are also set out.

**Chapter 6** deals with the councillors responsible for financial matters. It states that the councillor responsible for financial matters must be the mayor, executive mayor or a councillor designated by the executive mayor or council, depending on the structure of the municipality. It prohibits the councillor for financial matters from interfering in the financial management responsibilities assigned to the municipal manager of chief financial officer. The chapter defines the responsibilities of the councillor responsible for financial matters to include overseeing expenditures and revenue collection, preventing overspending of a budget or vote, and reporting regularly on the financial affairs of the municipality to the council. It provides for delegations.

**Chapter 7** defines the responsibilities of officials involved in municipalities' financial management. The municipal manager is designated as a municipality's municipal manager, with some general and specific responsibilities related to developing and maintaining effective, efficient and transparent systems of financial and risk management and internal control, budget and expenditure control, the control of assets and liabilities, and reporting. Written employment contracts and performance standards are required for the municipal manager. Part 2 of the Chapter sets out conditions for the delegation of powers and duties by municipal managers to other officials and outlines the implications this has for such other officials.

**Chapter 8** requires that municipalities establish Treasury and Budget Offices, under control of a chief financial officer, who, in turn, are enabled to delegate some specific responsibilities to officials who report to the chief financial officer.

**Chapter 9** allows municipalities to retain or establish a variety of municipal entities in terms of other relevant legislation, but also makes it possible for statutory and regulatory limitations and requirements to be imposed on such entities. These conditions concern accounting, auditing, asset transfers, debt management, governance, reporting and disclosure, decision-making, mandates and operational scope, planning and budgeting and investments. Every municipal entity is required to have an accounting authority who will be accountable for the execution of such conditions.

**Chapter 10** outlines requirements and procedures for the preparation, auditing and processing of annual financial statements of both municipalities and municipal entities. The municipal manager must, in accordance with generally recognised accounting practice, ensure that annual financial statements are issued and submitted to the Auditor-General and the national and relevant provincial Treasury. Copies of the relevant statements, the audit report and particulars of corrective action must be submitted to the provincial legislatures which will deal with these statements in accordance with their constitutional powers. Stringent conditions are set to ensure compliance by all relevant parties with these requirements.

**Note:** Sections 86 to 103 in Chapter 11 has been removed from the main text and can be located in Annexure A. The explanation below serves as information on the content. Changes may be affected to this chapter and is subject to the passage of the constitutional amendments.

**Chapter 11** defines the approach and procedures to be followed in the event of financial emergencies within the local sphere. It provides for a Municipal Financial Emergency Authority (MFEA) to oversee the administration of municipalities in financial emergency, with a view to normalising the financial affairs of such municipalities. The chapter further specifies procedures for the appointment of an Executive Officer for the MFEA by the Minister of Provincial and Local Government, for the declaration,

management and termination of a financial emergency, for a recovery plan in a municipality as well as for extraordinary measures should the measures taken in terms of the recovery plan be insufficient. It gives specific powers to the courts in this regard and also outlines the powers and duties of the EO of MFEA and of administrators of municipalities declared to be in a financial emergency. Specific provision is made for steps related to financial emergencies in cases where the boundaries of the affected municipalities have been re-demarcated in terms of the Municipal Demarcation Act.

**Chapter 12** deals with a number of general treasury matters. These are the assignment of powers to the National Treasury to make regulations or issue instructions or guidelines relevant to the Act or specific aspects of municipal financial management in general and for borrowing by municipalities or municipal entities. Provisions are also set for the creation of audit committees.

**Chapter 13** is concerned with financial misconduct within municipalities. It defines the concept of financial misconduct with reference to the various relevant clauses in other chapters of the Bill, and relevant to municipal officials as well as the accounting authorities and officials of municipal entities. A legal regime is provided for disciplinary proceedings and the Minister of Finance is empowered to make regulations prescribing procedures in this regard. Part 2 of the Chapter provides for criminal proceedings against municipal managers, accounting authorities and officials.

**Chapter 14** provides for miscellaneous aspects. It limits liability in respect of anything done in good faith in terms of the legislation, allows the Minister to exempt municipalities and municipal entities from specific provisions of the legislation, and sets out transitional arrangements for the phasing in of the legislation.

**Conclusion** The legislative reforms and transformation framework as articulated in the White Paper on Local Government is incomplete without a firm foundation for financial management reforms. The Municipal Finance Management Bill provides such a foundation for orderly and sound financial management principles and practices in the local sphere of government.

**Consultation** Drafting of the Bill coincided with an extensive consultation process which included workshops across the country, discussions with stakeholders and publication of the draft Bill for public comment.

### Annexure A

*The bill is tabled without this Annexure, that deals with Chapter 11 and other clauses of the bill that are dependent on the amending of the Constitution. The proposed constitutional amendments required are contained in clauses 9 and 10 of the “Constitution of the RSA Amendment Bill, 2001, Gazette Number 22460 of 13 July 2001. The clauses in this Annexure will only be formally tabled if these constitutional amendments are passed by Parliament.*

(1) Addition to long title in bill:

*To regulate financial management in the local sphere of government; to deal with financial emergencies in municipalities*

(2) Addition to contents in bill:

*Chapter 11*

*Financial Emergencies.*

- 86. *Establishment*
- 87. *Functions*
- 88. *General powers*
- 89. *Appointment and responsibilities of Executive Officer*
- 90. *Acting Executive Officer*
- 91. *Staff*
- 92. *Pension rights*
- 93. *Funds*
- 94. *Delegation*
- 95. *Application for declaration of a financial emergency*
- 96. *Appointment of administrator for municipality*
- 97. *Recovery plan*
- 98. *Powers of administrator*
- 99. *Application for termination of a declaration of financial emergency*
- 100. *Effect of boundary redetermination*
- 101. *Application for extraordinary relief*
- 102. *Suspension of municipal obligations*
- 103. *Termination of municipal obligations and proportional settlement of claims*

(3) Addition to definitions:

1. In this Act unless the context indicates otherwise—
  - “**administrator**”, in relation to a municipality in a financial emergency, means a person appointed in terms of section 96 as the administrator for that municipality;
  - “**court**” means a High Court having jurisdiction, and includes any court superior to the High Court;
  - “**Emergency Authority**” means the Municipal Financial Emergency Authority established in terms of section 86;
  - “**Executive Officer**”, in relation to the Municipal Financial Emergency Authority, means the person appointed as the Executive Officer of the Authority;
  - “**financial emergency**” means a financial emergency within the meaning of Chapter 11;
  - “**recovery plan**” means a plan prepared and approved in terms of section 97;

(4) Addition to Section 18 — Approval of Annual Budgets:

*(3) The process provided for in subsection (2) must be repeated until a budget is approved, subject to any dissolution of the council in terms of section 100 or 139 of the Constitution on account of the council’s failure to approve its budget.*

(5) Addition to Section 18 — Approval of Annual Budgets:

*(4) . . ., failing which steps in terms of section 139 of the Constitution may be taken against the council.*

**(6) Addition to Section 19 — Consequences of Failure to Approve Budgets:**

*(4) This section may be applied by a municipality as from the third month of the financial year and onwards only if the council has been dissolved in terms of section 100 or 139 of the Constitution.*

**(7) Addition to Section 25 — Long Term Loans:**

*(4) A municipality in respect of which a financial emergency has been declared, may incur long term debt to support financial restructuring, if so provided in the approved recovery plan.*

**(8) Addition to Section 27 — Security:**

*(2) . . .*

- (g) undertake to retain revenues or specific charges, fees, tariffs or funds at a particular level or at a level sufficient to meet its obligations arising from that debt;*
- (h) undertake to make provision in its budgets for the payment of those obligations, including capital and interest;*
- (i) agree to restrictions on debt the municipality may incur in future until such debt is settled.*

**(9) Addition to Chapter 11 — Fiscal Emergencies:****FINANCIAL EMERGENCIES**

*Note: This Chapter has been removed from the main text. Its form and content may change depending on the passage of the constitutional amendment.*

***Part 1: Establishment, functions and administration of Municipal Financial Emergency Authority******Establishment***

**86. (1)** *A Municipal Financial Emergency Authority is hereby established as an institution outside the public service but within the public administration as envisaged in section 195 of the Constitution.*

**(2)** *The Emergency Authority is a juristic person.*

***Functions***

**87.** *The Emergency Authority must oversee the administration of municipalities declared to be in a financial emergency with a view to normalising their financial affairs, and for this purpose—*

- (a) must perform the duties and may exercise the powers assigned to the Authority in terms of this Act;*
- (b) may monitor the implementation of recovery plans;*
- (c) may suspend, dismiss or discharge administrators, when necessary;*
- (d) may collect information on financial emergencies and best practices in resolving financial emergencies; and*
- (e) must prepare and submit annual reports to the Minister responsible for local government on its activities.*

***General powers***

**88.** *The Emergency Authority may do all that is necessary or expedient to perform its functions effectively, which includes the power to—*

- (a) determine its own staff establishment and the terms and conditions of employment for its staff within any policy framework determined by the Minister responsible for local government in consultation with the Minister of Finance;*

- (b) *appoint employees and seconded personnel to posts on its staff establishment;*
- (c) *obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or function;*
- (d) *open and operate its own bank accounts, subject to the Public Finance Management Act;*
- (e) *perform legal acts, or institute or defend any legal action in its own name;*
- (f) *engage in any lawful activity, whether alone or together with any other person; and*
- (g) *do anything that is incidental to the exercise of any of its powers.*

#### *Appointment and responsibilities of Executive Officer*

89. (1) *The Minister responsible for local government, acting with the concurrence of the Minister of Finance, must appoint a person as the Executive Officer of the Emergency Authority.*

(2) *A person appointed as the Executive Officer holds office—*

- (a) *for an agreed term not exceeding five years, but which is renewable; and*
- (b) *on terms and conditions set out in a written employment contract which must include terms and conditions setting performance standards.*

(3) *The Executive Officer—*

- (a) *manages the Emergency Authority;*
- (b) *is responsible for the performance by the Authority of its functions and the exercise of its powers; and*
- (c) *takes all decisions of the Authority in the performance of its functions and the exercise of its powers, except those decisions of the Authority taken in consequence of a delegation or instruction in terms of section 94.*

#### *Acting Executive Officer*

90. *When the Executive Officer is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Executive Officer, the Minister responsible for local government may designate another employee of the Emergency Authority, or a person seconded to the Authority, to act as Executive Officer.*

#### *Staff*

91. (1) *The staff of the Emergency Authority consists of—*

- (a) *the Executive Officer of the Authority; and*
- (b) *persons in the service of or seconded to the Authority.*

(2) *An employee of an organ of state may be seconded to the Emergency Authority by agreement between the Authority and such organ of state.*

(3) *Staff members referred to in subsection (1) (b) and persons seconded to the Emergency Authority perform their duties subject to the control and directions of the Executive Officer.*

#### *Pension rights*

92. *The Emergency Authority is regarded to be an employer for the purposes of the Government Employees' Pension Law, 1996 (Proclamation 21 of 1996), in regard to employees who elects to become members of the Government Employees' Pension Fund.*

#### *Funds*

93. (1) *The funds of the Emergency Authority consist of—*

- (a) *money appropriated annually by Parliament for the purposes of the Authority;*
- (b) *any government grants made to it; and*
- (c) *any other money legally acquired by it.*

(2) *The Emergency Authority may accept donations but only with the approval of the Minister responsible for local government.*

*Delegation*

94. (1) *The Executive Officer of the Authority may delegate, in writing, any of the powers or duties entrusted to the Authority in terms of this Act to a member of the staff of the Authority.*

(2) *A delegation in terms of subsection (1)—*

- (a) *is subject to the limitations or conditions that the Executive Officer may impose; and*
- (b) *does not divest the Executive Officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.*

(3) *The Executive Officer may confirm, vary or revoke any decision taken in consequence of a delegation in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*

*Part 2: Declaration, administration and termination of financial emergencies**Application for declaration of a financial emergency*

95. (1) *An application to court for a declaration that a municipality is in a financial emergency may be made by—*

- (a) *a creditor of the municipality;*
- (b) *the council, the municipal manager or the chief financial officer of the municipality;*
- (c) *the MEC for finance in the province;*
- (d) *the MEC for local government in the province;*
- (e) *the Minister;*
- (f) *the Minister responsible for local government; or*
- (g) *organised labour.*

(2) *An application in terms of subsection (1) may be made only if one or more of the following conditions exist:*

- (a) *the municipality has defaulted on the payment of an amount due and payable to a creditor or, if an amount has been prescribed, above that prescribed amount;*
- (b) *the municipality has defaulted on an agreement providing security for any debt of the municipality;*
- (c) *the municipality's actual current expenditure have exceeded actual current revenue for at least the three preceding financial years; or*
- (d) *the municipality had an operating deficit in excess of a prescribed percentage of actual operating revenues in the most recent financial year for which financial statements have been prepared.*

(3) *In considering an application in terms of subsection (1), the court may declare that a municipality is in a financial emergency if—*

- (a) *at least one of the conditions listed in subsection (2) exist; and*
- (b) *there is a serious fiscal or financial problem in the municipality that impedes the municipality from meeting its obligations.*

(4) *The court is not obliged to declare a that a municipality is in a financial emergency if it is satisfied that the municipality has taken steps that have a reasonable prospect of resolving the fiscal or financial problem referred to in subsection (2) (b).*

(5) *If the court declares that a municipality is in a financial emergency it must order the Emergency Authority to appoint an administrator for the municipality.*

(6) *Without derogating from the rules of court—*

- (a) *any application in terms of this section must be heard by the court as promptly as possible; and*
- (b) *notice of the application must be advertised in a newspaper with national circulation and given to—*
  - (i) *the mayor of the affected municipality, where applicable;*
  - (ii) *the municipal manager of the municipality;*
  - (iii) *the chief financial officer of the municipality;*
  - (iv) *the MEC for finance in the province;*
  - (v) *the MEC for local government in the province;*
  - (vi) *the Minister; and*
  - (vii) *the Minister responsible for local government.*

*(7) If the court declares that a municipality is in a financial emergency, it may order that legal proceedings by any creditor and the execution of any process against the municipality be stayed for a period not exceeding 90 days to allow for the appointment of an administrator and the preparation of a recovery plan for the municipality.*

#### *Appointment of administrator for municipality*

*96. (1) The Emergency Authority must give effect to a court order issued in terms of section 95 (5) and promptly appoint an administrator for the municipality.*

*(2) The Emergency Authority must determine the compensation of the administrator, and may require that the compensation and expenses of the administrator be paid by, or recovered from, the municipality.*

*(3) A person appointed as an administrator must have appropriate financial and management experience and skills to address any problems underlying a financial emergency.*

#### *Recovery plan*

*97. (1) The administrator appointed for a municipality must—*

- (a) conduct a sufficiently detailed investigation into the municipality's condition to determine the underlying fiscal or financial problems; and*
- (b) prepare and submit a recovery plan to the Emergency Authority as soon as possible, but in any event within the time frames determined by the Authority.*

*(2) When preparing the recovery plan the administrator must consult—*

- (a) the municipality; and*
- (b) the municipality's creditors, following a procedure that may be prescribed.*

*(3) The recovery plan and any amendments must—*

- (a) be designed to restore the municipality to a sound financial and fiscal condition as soon as possible, and to restore its creditworthiness;*
- (b) identify the underlying fiscal or financial problems of the municipality;*
- (c) describe a general strategy for addressing these problems;*
- (d) describe, so far as is reasonably possible, the specific actions intended to be taken by various parties;*
- (e) describe the anticipated time frame for recovery, and milestones to be achieved;*
- (f) identify the principal objectives of the plan, and methods for achieving those objectives;*
- (g) identify which of the administrator's powers referred to in section 96 may be used in implementing the plan; and*
- (h) provide for stakeholder input, if appropriate.*

*(4) The administrator must—*

- (a) submit a copy of the recovery plan to the municipality, the Emergency Authority and the parties involved in the court proceedings in which the financial emergency was declared; and*
- (b) allow public access to the recovery plan in the prescribed manner.*

*(5) Councillors, officials and staff of the municipality must co-operate with the administrator in investigating the financial emergency and in developing and implementing the recovery plan.*

*(6) The Emergency Authority must approve the plan if it complies with subsection (3).*

*(7) The administrator must report to the Emergency Authority, the municipality and creditors at such intervals or upon the reaching of such milestones as the Authority may determine from time to time.*

*(8) Reports must be in the prescribed form.*

*(9) (a) The administrator may amend a recovery plan as the need may arise.*

*(b) The administrator must—*

- (i) submit a copy of the amendment of the recovery plan to the municipality and the Emergency Authority; and*
- (ii) allow public access to the amendment in the prescribed manner.*

*(c) The Emergency Authority must approve the amendment if the recovery plan as amended would still comply with subsection (3).*

*(10) The administrator must endeavour to bring the municipality to a sound financial and fiscal condition as soon as possible.*

#### *Powers of administrator*

*98. (1) The administrator appointed for a municipality has access to any structure, functionary, official, premises, documents or records of the municipality.*

*(2) To the extent permitted in the recovery plan and subject to subsection (3) and any other applicable legislation, the administrator may exercise on behalf of the municipality any of the municipality's executive or legislative power necessary to restore the municipality to a sound financial and fiscal position.*

*(3) A recovery plan—*

*(a) may not permit the liquidation of assets needed for the provision of minimum municipal essential services; and*

*(b) may provide for the suspension of the remuneration and other benefits of members of the council or officials should they fail to co-operate in the implementation of the recovery plan.*

*(4) When exercising the powers permitted in the recovery plan, the administrator must consider the least intrusive practical means to effectively address the financial emergency, allowing the structures and functionaries of the municipality to act where they can and are willing do so in a timely and responsible manner.*

#### *Application for termination of a declaration of financial emergency*

*99. (1) An application to court for the termination of a declaration of financial emergency may be brought by—*

*(a) the Executive Officer;*

*(b) the council of the affected municipality;*

*(c) the applicant in the application to declare a financial emergency; or*

*(d) a creditor of a prescribed amount.*

*(2) Without derogating from the rules of court, notice of application for the termination of a declaration of financial emergency must be given—*

*(a) in the prescribed manner to all creditors to whom the municipality owes an amount in excess of a prescribed amount;*

*(b) to any creditor who filed the original application for declaration of a financial emergency;*

*(c) to the municipal manager and chief financial officer of the municipality;*

*(d) to the MEC for finance in the province;*

*(e) to the MEC for local government in the province;*

*(f) to the Minister;*

*(g) to the Minister responsible for local government; and*

*(h) in the prescribed manner to organised labour.*

*(3) Should the court find that a financial emergency no longer exists, the court must terminate the declaration of financial emergency and discharge the administrator appointed for the municipality.*

#### *Effect of boundary redetermination*

*100. (1) If the boundaries of a municipality under a declaration of financial emergency are redetermined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998), and the MEC for local government in the province issues a notice in terms of section 12 of the Municipal Structures Act regulating the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, then the declaration of financial emergency—*

*(a) automatically extends to any resulting municipality having at least 50 percent of its territorial area within the former municipality; or*

*(b) automatically terminate upon the issuance of the MEC's notice, and be of no further force and effect, as to any resulting municipality having less than 50 per cent of its territorial area within the former municipality.*

(2) An automatic extension in terms of subsection (1) (a) may be terminated in accordance with section 99 at any time.

(3) An automatic termination in terms of subsection (1) (b) may be avoided where a party named in section 95 (1)—

- (a) files an application with the court within 15 days of publication of the MEC's notice in terms of section 12 of the Municipal Structures Act; and
- (b) demonstrates to the satisfaction of the court that financial, fiscal, or management conditions are such that a financial emergency will also exist in the newly established municipality.

### *Part 3: Additional remedies*

#### *Application for extraordinary relief*

101. (1) If the administrator on reasonable grounds is of the view that the financial emergency cannot be resolved by the application of sections 97 and 98 alone, the administrator may, after consulting the Executive Officer, apply to a court for an order—

- (a) to stay legal proceedings by any creditor and the execution of any process against the municipality for a period not exceeding 90 days at a time;
- (b) to suspend the obligations of the municipality to its creditors until the declaration of the financial emergency is terminated; or
- (c) to terminate the obligations of the municipality to its creditors, and to settle claims proportionally, taking into account the preference of claims.

(2) Without derogating from the rules of court, notice of an application for extraordinary relief under this section must be given in the prescribed manner—

- (a) to all creditors to whom the municipality owes an amount in excess of a prescribed amount;
- (b) to any creditor who filed the original application for a declaration of a financial emergency;
- (c) to the municipal manager and the chief financial officer of the municipality;
- (d) to the MEC for finance in the province;
- (e) to the MEC for local government in the province;
- (f) to the Minister;
- (g) to the Minister for local government; and
- (h) in the prescribed manner to organised labour.

#### *Suspension of municipal obligations*

102. (1) Before granting an application in terms of section 101 (1) (b), the court must be satisfied that—

- (a) the municipality cannot meet its obligations to its creditors; and
- (b) all assets and rights not necessary to provide minimum essential municipal services have been liquidated for the benefit of meeting creditors' claims.

(2) If the court grants an application referred to in subsection (1), it must give preference to the rights of secured creditors as to assets or rights with which they are secured, provided that such security was given in good faith and at least six months prior to any application in terms of section 93 for a declaration of financial emergency.

#### *Termination of municipal obligations and proportional settlement of claims*

103. (1) Before granting an application in terms of section 101 (1) (c), the court must be satisfied that—

- (a) the municipality cannot meet its obligations to its creditors and would not be able to do so in the foreseeable future;
- (b) all assets and rights not necessary to provide minimum essential municipal services have been liquidated for the benefit of meeting creditors' claims; and
- (c) all employees have been discharged except those that are affordable in terms of reasonably projected revenues.

(2) If the court grants an application referred to in subsection (1), it must—

- (a) *give preference to the rights of secured creditors as to assets or rights with which they are secured, provided that such security was given in good faith and at least six months prior to any application in terms of section 93 for a declaration of financial emergency; and*
- (b) *treat unsecured claims as concurrent and order that such claims be settled proportionally.*

**(10) Addition to Section 104 — Treasury Regulations, Instructions and Guidelines:**

- (s) *the administration of financial emergencies;*
- (t) *the assignment of additional duties and powers to the Emergency Authority;*
- (u) *the suspension, dismissal or discharge of administrators appointed for municipalities declared to be in a financial emergency;*
- (v) *the settlement of claims against a municipality following an order of court in terms of section 99;*

**(11) Addition to Section 112 — Offences and Penalties:**

- (5)
  - (e) *obstructs, or fails to co-operate with, an administrator in the fulfilment of the administrator's duties under this Act.*

**(12) Addition to Section 116 — Amendment of Legislation:**

*(4) Schedule 3 of the Public Finance Management Act is hereby amended by the insertion in Part A after item 17 of the following item:*

*“17A. Municipal Financial Emergency Authority”.*

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