

## Government Notice

### Department of Finance

#### **MUNICIPAL FINANCE MANAGEMENT BILL**

In accordance with section 154(2) of the Constitution of the Republic of South Africa (Act No. 108 of 1996) the attached Municipal Finance Management Bill, 2000, is published for comment.

Also attached is the Policy Framework for Municipal Borrowing and Intervention informing the draft Bill.

Interested parties are invited to submit comments on the proposed legislation and the underlying policy framework before August 31, 2000 by

(a) posting comments to –

T.V. Pillay  
Director: Local Government Budgets  
Department of Finance  
P.B. X115  
Pretoria, 0001

(b) fax to – (012) 315-5045

(c) delivering comments to –

Room 1622  
16<sup>th</sup> Floor  
Department of Finance  
240 Vermeulen Street  
Pretoria, 0001

(d) e-mail to: [pillaytv@finance.pwv.gov.za](mailto:pillaytv@finance.pwv.gov.za)

CHIEF DIRECTOR: INTERGOVERNMENTAL RELATIONS

NATIONAL TREASURY

**Department of Finance**

**MUNICIPAL FINANCE MANAGEMENT  
BILL, 2000**



# **MUNICIPAL FINANCE MANAGEMENT BILL**

**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 efficiently and effectively; to determine the responsibilities of persons entrusted with local sphere financial management; to determine the conditions on which municipalities may borrow money; and to provide for matters connected therewith.**

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**CHAPTER 1**  
**INTERPRETATION, OBJECT, APPLICATION AND**  
**AMENDMENT OF THIS ACT**

**Definitions**

1. In this Act unless the context indicates otherwise –

**“accounting authority”** means an authority referred to in section 41;

**“accounting officer”** means an officer referred to in section 27 (1);

**“annual Division of Revenue Act”** means the Act of Parliament which must annually be enacted in terms of section 214 (1) of the Constitution;

**“applicable standards of generally recognised accounting practice”** means an accounting practice complying in material respects with standards issued by the Accounting Standards Board for municipalities and municipal entities in terms of the Public Finance Management Act;

**“business plan”**, in relation to a municipal entity, means an annual plan of the entity approved by the Municipal Council that includes –

- (a) the budget for that year;
- (b) key performance objectives; and
- (c) any potential liabilities, including particulars of any proposed borrowing of money during the year;

**“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 an officer of a municipality designated in terms of 35 (2) (a);

**“corporate entity”** means a company, co-operative, trust, fund or any other juristic person established in terms of applicable national or provincial legislation;

**“councillor”** means a member of a municipal council;

**“councillor responsible for financial matters”** means –

- (a) in the case of a municipality with an executive committee referred to in section 42 of the Municipal Structures Act, the member of the committee elected as mayor;
- (b) in the case of a municipality with an executive mayor referred to in section 60 of the Municipal Structures Act, the executive mayor; and
- (c) in the case of a municipality which does not have either an executive committee or an executive mayor, the councillor to whom the responsibility for budgetary matters has been assigned by the council;

**“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, overdraft, or the issuance of municipal securities; or
- (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;

**“ designated municipal service”** means –

- (a) an electricity reticulation system;
- (b) a gas reticulation system;
- (c) a municipal public transport system;
- (d) a potable water supply system;
- (e) a domestic waste-water and sewerage disposal system; or
- (f) any other municipal service that may be prescribed as a designated municipal service;

**“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;
- (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”** means a year ending 30 June;

**“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;

**“functionary”**, in relation to a municipality, means a person elected, designated or appointed by a municipal council to a post or position regulated by the Municipal Structures Act;

**“irregular expenditure”**, in relation to a municipal entity, means a payment, incurred in contravention of or that is not in accordance with a requirement of this Act or any other legislation applicable to the municipal entity;

**“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;

**“long term debt”** means debt which 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;

**“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;

**“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;

**“municipal entity”** means –

- (a) a corporate entity under the ownership control of one or more municipalities, and includes a subsidiary of such an entity; or
- (b) the governing body of a multi-jurisdictional municipal service district established in terms of section 86 of the Municipal Systems Act;

**“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;

**“municipality”** –

- (a) as a corporate entity, means a municipality as described in section 2 of the Municipal Systems Act; and
- (b) as a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);

**“municipal manager”** means a person appointed in terms of section 82 of the Municipal Structures Act as the head of the municipality’s administration;

**“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. of 2000);

**“National Treasury”** means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act 1 of 1999);

**“organised labour”** means a trade union registered in terms of section 96 of the Labour Relations Act, 1995 (Act No. 66 of 1995), representing employees of a municipality;

**“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; and
- (b) in relation to a vote, means when expenditure under a vote exceeds the amount appropriated for that vote, subject to section **31**;

**“ownership control”**, in relation to a corporate entity, 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 all, or the majority of, the members of that entity’s board of directors or equivalent governing body;
- (b) to appoint or remove that entity’s chief executive officer;
- (c) to cast all, or the majority of, the votes at meetings of that board of directors or equivalent governing body; or
- (d) to control all, or the majority of, the voting rights at a general meeting of the entity;

**“prescribe”** means prescribe by regulation, instruction or guideline in terms of section **78** or **85**;

**“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;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act 1 of 1999);

**“Revenue Fund”**, in relation to a municipality, means the revenue fund of a municipality established in terms of section 7 and for the purposes of which the municipality must open one or more bank accounts in terms of section 8 (3);

**“security”** means a lien, pledge, mortgage, cession or other form of collateral intended to secure the interest of a creditor;

**“short term debt”** means a debt which is repayable over a period not exceeding one year;

**“structure”**, in relation to a municipality, means the council of the municipality or any committee or other collective structure of a municipality elected, designated or appointed in terms of the Municipal Structures Act;

**“this Act”** includes regulations made and instructions issued in terms of section 78 or 85;

**“unauthorised expenditure”**, in relation to a municipality, means –

- (a) overspending a budget of the municipality;
  - (b) overspending a vote, subject to section 31;
  - (c) expenditure from a vote which is unconnected with the purpose of that vote;
- or

- (d) expenditure incurred in contravention of or which is not in accordance with a requirement of this Act or any other legislation applicable to a municipality;

**“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
- (b) which specifies the total amount which is appropriated for the purposes of the department or functional area concerned.

### **Object of this Act**

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, excluding the Public Finance Management Act , this Act prevails.

### **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 on the contents of the draft legislation.

## CHAPTER 2

### NATIONAL AND PROVINCIAL SUPERVISION

#### 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.
- (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
    - (ii) comply with sections 14 and 18;
  - (b) monitor expenditure and revenue of municipalities to establish whether expenditure and revenue remain within budget;
  - (c) prescribe uniform treasury norms and standards for municipalities and municipal entities;
  - (d) establish annually a growth factor for the budgets of municipalities as envisaged in section 14 (1) (c);
  - (e) monitor and assess compliance by municipalities and municipal entities with –
    - (i) this Act; and
    - (ii) any standards of generally recognised accounting practice and uniform classification systems prescribed in terms of Chapter 11 of the Public Finance Management Act; and

- (f) assist municipalities and municipal entities in building their capacity for efficient, effective and transparent financial management;
- (g) review any system of financial management and internal control in any municipality;
- (h) intervene by taking 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
- (i) do anything further that is necessary to fulfil its responsibilities effectively.

### **Delegations by National Treasury**

**6.** (1) The Minister may in writing delegate any of the powers or duties entrusted to the National Treasury in terms of this Act –

- (a) to the head of a department forming part of the National Treasury;
- (b) to the head of a national department charged with responsibility for local government;
- (c) to a provincial treasury, or to the head of a provincial department, as the Minister and the MEC for finance in the province concerned may agree; or
- (d) to a structure or functionary of a district municipality subject to subsection (4), as the Minister and the council of the district municipality 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 Minister of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) A delegation in terms of subsection (1) (a), (b) or (c) to the head of a department, or to a provincial treasury -

(a) may authorise that head of department, in the case of a delegation in terms of subsection (1) (a) or (b), to sub-delegate, in writing, the delegated power or duty to –

(i) another National Treasury official or an official in that department;

(ii) the holder of a specific post in the National Treasury or that department; or

(iii) the accounting officer of a municipality; or

(iv) the accounting authority of a municipal entity; and

(b) may authorise a provincial treasury or head of a provincial department, in the case of a delegation in terms of subsection (1) (c), to sub-delegate, in writing, the delegated power or duty to –

(i) an official in that provincial treasury or department;

(ii) the holder of a specific post in that provincial treasury or department;

(iii) the accounting officer of a municipality or municipal entity; or

(iv) the accounting authority of a municipal entity.

(4) A structure or functionary of a district municipality to whom a power or duty has been delegated in terms of subsection (1) (d), may perform the delegated function only in relation to local municipalities in the area of the district municipality.

(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

### MUNICIPAL REVENUE

#### *Part 1: Municipal Revenue Funds*

##### **Establishment**

7. (1) Every municipality must establish a Revenue Fund into which all money received by the municipality must promptly be paid, including any grants made to it –

- (a) in terms of the annual Division of Revenue Act; and
- (b) by the province.

(2) Subsection (1) does not apply to –

- (a) money received by a municipality on behalf of a municipal entity or other person providing a municipal service to communities in the municipality; or
- (b) any other money of a prescribed category excluded from payment into a municipality's Revenue Fund.

(3) Money may be withdrawn from a municipality's Revenue Fund only in terms of section 9 (1).

##### **Control of Municipal Revenue Funds**

8. (1) The municipal manager of a municipality is accountable for the municipality's Revenue Fund and must enforce compliance with the provisions of section 9.

(2) A municipal manager may not delegate the duties mentioned in subsection (1) to another person except to the municipality's municipal finance officer.

(3) Money that must be paid into a municipality's Revenue Fund is paid into the Fund by depositing it into a bank account of the Fund in accordance with any requirements that may be prescribed.

### **Withdrawals from municipal Revenue Funds**

9. (1) Only the municipal manager of a municipality, or an official of the municipality acting on the written authority of the municipal manager, may withdraw money or authorise the withdrawal of money from the municipality's Revenue Fund, and may do so only –

- (a) to provide funds that have been authorised in terms of an appropriation contained in a budget approved by the municipal council;
- (b) to refund money incorrectly paid into the Fund; or
- (c) to refund deposits paid by users and consumers of municipal services.

(2) A payment in terms of subsection (1) (b) may be made without appropriation by the municipal council, provided that particulars of such payment are tabled in the council no later than two months after the payment has been made.

(3) Any payment from a municipality's Revenue Fund must be dealt with as unauthorised expenditure if the municipality is unable to produce written proof that

–

- (a) the payment was made in accordance with subsection (1); or
- (b) the proviso to subsection (2) has been complied with.

## ***Part 2: Banking, cash management and investments***

### **Cash management and investment framework**

**10.** The National Treasury may prescribe a framework within which municipalities must conduct their cash management and make investments of money not immediately required.

### **Banking and cash management**

**11.** (1) A municipality must establish appropriate and effective cash management and banking arrangements in accordance with the framework prescribed in terms of section **10**.

(2) Municipalities may not open a bank account abroad or with a bank not registered in terms the Banks Act, 1990 (Act no. 94 of 1990).

(3) A bank that has opened an account for a municipality, or any other institution that holds money for a municipality, must promptly disclose information regarding the account when so requested by the National Treasury, the relevant provincial treasury or the Auditor-General.

### **Investments**

**12.** (1) A municipality must establish appropriate arrangements in accordance with the framework prescribed in terms of section **10** for the investment of money not immediately required.

(2) An investment in terms of subsection (1) must be of a kind permitted by the investment framework.

## **CHAPTER 4**

### **MUNICIPAL BUDGETS**

#### **Annual appropriations**

**13.** A municipal council must for each financial year by way of an annual budget appropriate money from its Revenue Fund for the requirements of the municipality.

#### **Municipal annual budgets**

- 14.** (1) The annual budget -
- (a) must be in accordance with a format as may be prescribed;
  - (b) must be balanced to ensure that the total amount appropriated in terms of the budget does not exceed the realistically anticipated revenue; and
  - (c) may not exceed a growth factor as determined by the National Treasury.
- (2) The annual budget must at least contain –
- (a) estimates of all revenue expected to be received during the financial year to which the budget relates;
  - (b) estimates of current expenditure for that financial year, broken down per vote as may be appropriate for the municipality concerned;
  - (c) estimates of interest and debt servicing charges, and any repayments on loans;
  - (d) estimates of capital expenditure for that financial year and the projected financial implications of that expenditure for future financial years;
  - (e) proposals for financing any anticipated deficit for that financial year in terms of the provisions of Chapter 5 relating to short term borrowing;

- (f) 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;
- (g) the projected –
  - (i) revenue for the previous financial year;
  - (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 under its ownership control and from such municipal entities to the municipality, during the previous financial year;
- (h) the actual –
  - (i) revenue for the year preceding the previous financial year;
  - (ii) expenditure for that financial year, broken down per vote;
  - (iii) borrowing for that financial year; and
  - (iv) funding flow from the municipality to municipal entities under its ownership control and from such municipal entities to the municipality, during that financial year; and
- (i) any other information as may be prescribed, including any multi-year budget information.

(3) When an annual budget is tabled in the municipal council, the municipal manager must submit measurable objectives for each vote in the budget.

(4) The National Treasury, after consulting the relevant provincial treasury, may withhold funds due to a municipality from the National Revenue Fund if the municipality fails to comply with a provision of this section or any other applicable

treasury norms and standards established in terms of section 216 (1) of the Constitution.

### **Budget process**

**15.** (1) The councillor responsible for financial matters must at least four months before the start of each financial year, prepare a draft annual budget for that financial year.

(2) The councillor responsible for financial matters must –

(a) allow the public –

(i) access to the draft budget by making it available at the main administrative office of the municipality; and

(ii) to submit written comments and representations to the municipality; and

(b) table the draft budget in the municipal council for discussions and public hearings.

(3) The councillor responsible for financial matters must submit a copy of the municipality's draft budget to –

(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 district municipality whose name does not appear on the list referred to in paragraph (a);

(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) The councillor responsible for financial matters must as soon as the council discussions and the public hearings referred to in subsection (2) have been completed –

- (a) prepare the budget for the financial year, taking into account –
  - (i) the considerations of and public hearings conducted by the council on the draft budget;
  - (ii) any public comment and representations received by the municipality in terms of subsection (2) (a); and
  - (iii) any recommendations of the National Treasury and the relevant provincial treasury on the draft budget and any guidelines and policy statements issued by the National Treasury; and
- (b) table the budget in the council for approval.

(5) The councillor responsible for financial matters must manage the budget process in such a way that the budget is tabled in the council in terms of subsection (4) (b) at least 30 days before the start of the financial year to which that budget relates.

(6) A municipality must pass its annual budget before the start of the financial year to which it relates.

### **Approval of annual budgets**

**16.** (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.

(2) If a municipal council fails to pass 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 14 days of the meeting that failed to approve the budget.

(3) If a municipal council again fails to pass an annual budget by the requisite majority and, as a consequence of which, there is no approved annual budget at the start of the financial year to which it relates, funds may for the requirements of the municipality be withdrawn from the municipality's Revenue Fund in accordance with section 17.

#### **Expenditure during financial year until annual budget is passed**

**17.** (1) If a municipality's annual budget is not approved before the start of the financial year to which it relates, funds may, with the approval of the MEC for local government in the province concerned, after consulting the MEC for finance, be withdrawn from the municipality's Revenue Fund in accordance with this section for the requirements of the municipality until the budget is passed.

(2) Funds withdrawn from a Revenue Fund in terms of subsection (1) –

- (a) may be used only to defray current expenditure in connection with matters for which funds were appropriated in the previous annual budget or adjustments budget; and
- (b) may not –
  - (i) during the first four months of that financial year, exceed one third of the total amount appropriated in the previous annual budget for current expenditure;
  - (ii) during each of the following months, exceed 8 per cent of the total amount appropriated in the previous annual budget for current expenditure; and
  - (iii) in aggregate, exceed the total amount appropriated in the previous annual budget for current expenditure.

(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 the annual budget for that financial year.

### **Municipal adjustments budgets**

**18.** (1) The councillor responsible for financial matters may table an adjustments budget in the municipal council as and when necessary, but must table an adjustments budget when this becomes necessary –

- (a) due to the under collection of revenue;
- (b) to appropriate funds for the reduction of debt or the funding of capital projects; or
- (c) to provide for other matters that may be prescribed.

(2) An adjustments budget, apart from the matters referred to in subsection (1) (a), (b) and (c), may provide only for –

- (a) the appropriation of funds that have become available from another sphere of government;
- (b) unforeseeable and unavoidable expenditure recommended by the municipal manager, within a prescribed framework;
- (c) the utilisation of savings between votes in terms of section **31**; and
- (d) any other matter approved by the Minister.

(3) An adjustments budget must be in the prescribed format and contain the prescribed information.

(4) Section **15** (3) applies in respect of a draft adjustments budget and in such application a reference in that section to a draft annual 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.

(6) Section **16** (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**

**19.** (1) The municipal manager of a municipality must, as a financial year progresses, submit quarterly reports in the prescribed format on the state of the municipality's budget to the –

- (a) National Treasury and the relevant provincial treasury, in the case of a municipality whose name appears on the list published in terms of section **15** (3) (a);
- (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);
- (c) to 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 a prescribed number of days after the end of each reporting period.

(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; and
- (c) actual borrowings for that period, and for the financial year up to the end of that period.

### **Unauthorised expenditure**

**20.** (1) Unauthorised expenditure does not form a charge against a municipality's Revenue Fund.

(2) Subsection (1) does not apply if the municipal council authorises the expenditure by resolution adopted with a supporting vote of a majority of the members.

(3) If implementation of a decision of the council or any structure or functionary of a municipality is likely to result in unauthorised expenditure, the municipal manager of the municipality will, for the purposes of subsection (1), be responsible for any resultant unauthorised expenditure unless the municipal manager has informed the council, structure or functionary in writing of the likelihood of that unauthorised expenditure.

(4) The municipal manager must in writing inform the National Treasury and the relevant provincial treasury of –

- (a) any unauthorised expenditure that has been incurred by the municipality; and
- (b) the steps that have been taken to recover or rectify the unauthorised expenditure and to prevent a recurrence.

(5) The National Treasury may regulate the application of this section by regulation in terms of section 74.

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

21. (1) Draft national or provincial legislation that assigns an additional function or power to, or imposes any other obligation on, a municipality, must, in a memorandum that must be introduced with that legislation in Parliament or the provincial legislature concerned, give at least a three year projection of the financial implications of that function, power or obligation to the municipality.

(2) The National Treasury, the Minister responsible for local government and organised local government must be consulted before such legislation is introduced in Parliament or the provincial legislature concerned.

## CHAPTER 5

### DEBT

#### Competence to incur debt

22. (1) A municipality may incur 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
- (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 a year; and
- (b) may not renew or refinance its short term debt.

(4) (a) No lender may extend credit to a municipality for the purpose of renewing or refinancing 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 by the contract in terms of which the credit was extended to the municipality.

(5) A municipality may incur long term debt only for purposes of capital investment in 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. Such investment may include costs of financing and professional services directly related to such investment.

### **Conditions on which municipal debt may be incurred**

- 23.** 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
    - (ii) inviting the public to submit written representations to the council in respect of the draft resolution;
  - (d) the municipal manager, prior to the adoption of the resolution, has submitted an information statement to the council setting out the purpose for which the debt is to be incurred, the anticipated total cost of credit over the repayment

period, the essential repayment terms, and particulars of any security to be provided;

- (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 **24** (4) have been complied with.

### **Security**

**24.** (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 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;
- (b) 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;
- (c) undertake to make provision in its budgets for the payment of those obligations, including capital and interest;
- (d) undertake to deposit funds with the lender or a third party as security for the debt;
- (e) agree to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders, including revenue intercepts, payments into

special purpose funds or accounts or other payment mechanisms or procedures;

- (f) cede as security any category of revenue or rights to future revenue specified in the financing agreement or information statement contemplated in section **23** (d);
- (g) undertake to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms;
- (h) agree to restrictions on debt the municipality may want to incur in future; and
- (i) agree to such other arrangements as the municipality may consider necessary and prudent.

(3) A council resolution authorising the giving of security in terms of subsection (1) –

- (a) must determine whether the asset or right with respect to which the security is given, is necessary for providing a minimum essential municipal service; and
- (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 given, 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.

(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.

### **Prohibited actions**

25. The national or a provincial government may guarantee debt of a municipality only in accordance with Chapter 8 of the Public Finance Management Act.

### **Disclosure**

26. 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 –

- (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.

## CHAPTER 6

### RESPONSIBILITIES OF MUNICIPAL OFFICIALS

#### *Part 1: Municipal managers*

##### **Accounting officer**

27. (1) The municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act.

(2) The employment contract of an accounting officer must be in writing and, where possible, include performance standards. The provisions of sections 29, 30, 32 and 33, as may be appropriate, are regarded as forming part of such contract.

##### **Acting accounting officers**

28. When an accounting officer is absent or otherwise unable to perform the functions of accounting officer, or during a vacancy, the functions of accounting officer must be performed by the official acting in the place of that accounting officer.

##### **General responsibilities of accounting officers**

29. The accounting officer of a municipality –

- (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;
  - (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;
- (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;
  - (ii) prevent unauthorised expenditure and losses resulting from criminal conduct; and
  - (iii) manage available working capital efficiently and economically;
- (e) must without delay report all losses as result of criminal conduct to the South African Police Service;
- (f) is responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities, of the municipality;
- (g) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation;
- (h) must settle all contractual obligations and pay all money owing, within the prescribed or agreed period;
- (i) on discovery of any unauthorised expenditure, must immediately report, in writing, particulars of the expenditure to the municipal council and the Auditor-General;
- (j) must take effective and appropriate disciplinary steps against any official in the service of the municipality 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 municipality; or
  - (iii) makes or permits an unauthorised expenditure expenditure;
- (k) before transferring any funds otherwise than in terms of a commercial or other business transaction to an entity outside the municipality, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;
- (l) must enforce compliance with any prescribed conditions if the municipality gives financial assistance to any entity or person;
- (m) must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the municipal council;
- (n) must promptly inform the National 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;
- (o) 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
- (p) must comply, and take all reasonable steps to ensure compliance by the municipality, with the provisions of this Act.

### **Accounting officers' responsibilities relating to budgetary control**

- 30.** (1) The accounting officer of a municipality is responsible for ensuring that –
- (a) expenditure of the municipality is in accordance with the budget of the municipality;
  - (b) effective and appropriate steps are taken to prevent –
    - (i) overspending of the municipality's budget;
    - (ii) under collection of revenue due; and
    - (iii) unauthorised expenditure.
- (2) An accounting officer, for the purposes of subsection (1), must –
- (a) within 15 days of the end of each month submit to the councillor responsible for financial matters –
    - (i) information in the prescribed format on actual revenue and expenditure for that month;
    - (ii) a projection of expected 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 of the steps that are taken to ensure that the projected expenditure and revenue remain within budget;
  - (b) report to the councillor responsible for financial matters, any impending—
    - (i) under collection of revenue due;
    - (ii) shortfalls in budgeted revenue; and
    - (iii) overspending of the municipality's budget; and
    - (iv) any appropriate steps to be taken;

(3) The councillor responsible for financial matters must table in the council any 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.

#### **Virement between votes in a budget**

**31.** (1) The accounting officer of a municipality may utilise a saving in the amount appropriated under a vote in a budget towards the defrayment of excess expenditure under another vote in the same budget, unless the municipal council directs otherwise.

(2) The accounting officer must as soon as possible table in the municipal council a report containing the prescribed particulars concerning the utilisation of a saving in terms of subsection (1).

#### **Information to be submitted by accounting officers**

**32.** (1) An accounting officer 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.

(2) If an accounting officer is unable to comply with any of the responsibilities determined for accounting officers in this Part, the accounting officer must promptly 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 accounting officers**

**33.** (1) The accounting officer of a municipality may in writing delegate any of the powers or duties entrusted or delegated to the accounting officer in terms of this Act, to an official in that municipality.

(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;
- (c) may either be to a specific individual or to the holder of a specific post in the municipality; and
- (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The accounting 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.

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

**34.** 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;
- (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 expenditure and any under collection of revenue due;
  
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section **33**; 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.

## **CHAPTER 7**

### **MUNICIPAL BUDGET AND TREASURY OFFICES**

#### **Establishment**

- 35.** (1) Every municipality must have a budget and treasury office.
- (2) Budget and treasury offices consists of –
- (a) a chief financial officer who must be an official of the municipality designated by the municipal manager to be administratively in charge of budgetary and treasury functions; and
  - (b) the staff allocated by the municipal manager to the chief financial officer for the performance of those functions.

#### **Functions and powers**

- 36.** (1) The chief financial officer of a municipality performs the functions and exercises the powers that may be prescribed.
- (2) The chief financial officer of a municipality is accountable to the municipality's municipal manager for the performance of the functions and the exercise of the powers referred to in subsection (1).

#### **Delegation of functions and powers**

- 37.** (1) The chief financial officer of a municipality may in writing delegate any of the powers or duties entrusted or delegated to the chief financial officer in terms of this Act to –
- (a) an official in the budget and treasury office or another official in the municipality;
  - (b) the holder of a specific post in the budget and treasury office or

elsewhere in the municipality; or

- (c) the accounting authority of a municipal entity under the ownership control of the municipality.

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

- (a) is subject to any limitations or conditions that the chief financial officer may impose;
- (b) does not divest that chief financial officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The chief financial officer concerned 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.

## **CHAPTER 8**

### **MUNICIPAL ENTITIES**

#### *Part 1: General*

##### **Performance of municipal services through corporate entities**

**38.** (1) A municipality may in terms of any applicable national or provincial legislation establish, or acquire an interest in, a corporate entity which as its main activity provides a municipal service in the municipality or in an area of which the municipality forms part.

(2) A corporate entity established or acquired in terms of subsection (1) performing a municipal service which is not a designated municipal service, must be wholly owned by one or more municipalities.

(3) A municipality may not establish or acquire a corporate entity solely for the purpose of raising or borrowing money.

##### **Municipal representatives serving on boards of municipal entities and other corporate entities**

**39.** (1) Before the council of a municipality appoints or nominates for appointment a person as a member of the board of directors or other governing body of a municipal entity, it must obtain and consider a recommendation of the municipal manager on the matter.

(2) A person appointed or nominated for appointment by a

municipal council as a member of the board of directors or other governing body of a municipal entity must have the relevant skills and expertise in the services to be rendered as such a member.

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

- (a) the person appointed or nominated complies with subsection (2); and
- (b) the number of councillors on such a board or other body does not exceed a prescribed limit.

(4) (a) A councillor or official of a municipality may not receive compensation for serving on the board of directors or other governing body of a municipal entity under the ownership control of that municipality.

(b) Paragraph (a) does not prevent the payment of allowances to **councillors** or officials to reimburse them for reasonable expenses relating to the work of the municipal entity.

(5) Subsection (4) also applies to councillors or officials of a municipality serving on the board of directors or other governing body of any other corporate entity providing a service to or in the municipality.

### **List of municipal entities**

**40.** (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 –

- (a) all municipal entities under the ownership control of the municipality as at the last day of the financial year; and
- (b) any other undertakings in which the municipality obtained an interest during the financial year.

(2) A list in terms of subsection (1) must be in the prescribed format and contain the prescribed particulars.

### ***Part 2: Accounting authorities***

#### **Accounting authorities**

**41.** (1) Every municipal entity must have an authority which must be accountable for the purposes of this Act.

- (2) (a) If the municipal entity –
- (i) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or
  - (ii) does not have a controlling body, the chief executive officer or other person in charge of the entity is the accounting authority for that entity unless specific legislation applicable to that entity designates another person as the accounting authority.

(b) The National Treasury, in exceptional circumstances, may approve or instruct that another functionary of a municipal entity must be the accounting authority for that entity.

(c) The National Treasury may at any time withdraw an approval or instruction in terms of paragraph (b).

(d) A municipal entity must inform the Auditor-General promptly and in writing of any approval or instruction in terms of paragraph (b) and any withdrawal of an approval or instruction in terms of paragraph (c).

(3) To the extent that the accounting authority of a municipal entity is in terms of this Act accountable to the municipality exercising ownership control over it, it must discharge that responsibility through the municipal manager of the municipality.

(4) If a board or other controlling body is the accounting authority of a municipal entity, that board or other body must appoint the chief executive officer of the entity or a member of the board or body to manage the financial affairs of the entity and to perform the accountability responsibilities of the accounting authority on a day to day basis in accordance with the instructions of the accounting authority.

### **General responsibilities of accounting authorities**

**42.** (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;
- (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 **78**;
- (iii) an appropriate procurement and provisioning system which is

- fair, equitable, transparent, competitive and cost-effective; and
- (iv) a system through which all major 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 –
    - (i) collect all revenue due to the public 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;
  - (d) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the entity;
  - (e) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation;
  - (f) 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
    - (iii) makes or permits an irregular expenditure;
  - (g) 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;
  - (h) 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

(i) must comply, and ensure compliance by the entity, with the provisions of this Act and any other legislation applicable to the entity.

(2) If an accounting authority is unable to comply with any of the responsibilities determined for accounting authorities in this Part, the accounting authority must promptly report the inability, together with reasons, to the council of the municipality exercising ownership control over it.

#### **Information to be submitted by accounting authority**

**43.** The accounting authority of a municipal entity must submit to the municipal manager of the relevant municipality, 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.

### ***Part 3: Other officials of municipal entities***

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

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

- (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 relevant municipal entity; and
  - (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) The accounting authority may confirm , vary or revoke any decision taken by an official in consequence of a delegation or instruction 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.

### **Responsibilities of other officials**

- 45.** (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;
  - (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;
  - (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section **44**; 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.

(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 4: Loans and guarantees*

### **Borrowing of money**

**46.** A municipal entity may borrow money but only in accordance with a business plan approved by the municipal council or councils exercising ownership control over it.

### **Guarantees**

**47.** A municipality may guarantee any loan of a municipal entity under its ownership control provided the loan is reflected in the approved business plan of the entity and is disclosed in the municipality's consolidated financial statements.

## CHAPTER 9

### FINANCIAL STATEMENTS AND AUDITING

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

##### **Annual report and financial statements of municipalities not controlling municipal entities**

**48.** (1) The accounting officer of a municipality which does not exercise ownership control over any municipal entity –

- (a) must prepare financial statements for each financial year in accordance with generally recognised accounting practice;
- (b) must reflect in those statements any financial stake the municipality may have in any other undertakings;
- (c) must submit those financial statements to the Auditor-General for auditing within two months after the end of the financial year; and
- (d) within one month of receiving the Auditor-General's audit report, must –
  - (i) table in the municipal council an annual report on the activities of the municipality during that financial year, a copy of the financial statements and the audit report;
  - (ii) submit to the National Treasury and the provincial treasury concerned copies of the municipality's annual report, the financial statements and the audit report.

(2) The Auditor-General must audit the financial statements referred to in subsection (1) (a) and submit an audit report on those statements to the accounting officer within three months of receipt of the statements.

(3) The annual report and audited financial statements referred to in subsection (1) (d) 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; and
- (b) include particulars of –
  - (i) any material losses through criminal conduct and any unauthorised expenditure that occurred during the financial year;
  - (ii) any criminal or disciplinary steps taken as a result of such losses or unauthorised expenditure;
  - (iii) any material losses recovered or written off; and
  - (iv) any other matters that may be prescribed.

(4) (a) Representatives of the Auditor-General, the relevant provincial treasury and the relevant provincial department are entitled to attend and to speak at a 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.

- (b) The municipal manager must –
  - (i) give written notice of such meetings to the Auditor-General, the relevant provincial treasury and the relevant provincial department; and
  - (ii) submit copies of the minutes of these meetings to the Auditor-General, the relevant provincial treasury and the relevant provincial department.

(5) The financial statements and audit report must be made public when tabled in the municipal council.

(6) The MEC for finance in the province concerned, without delay, must submit copies of the financial statements and the audit report and any particulars of corrective action referred to in subsection (3) (b) (ii) to the relevant provincial legislature.

### **Annual report and financial statements of municipal entities**

**49.** (1) The accounting authority of a municipal entity

must –

- (a) prepare financial statements in respect of the entity for each financial year in accordance with generally recognised accounting practice, unless the Accounting Standards Board approves another accounting standard for that entity;
- (b) reflect in those statements any financial stake the entity may have in any other undertakings;
- (c) submit those financial statements within one month after the end of the financial year to –
  - (i) the auditors of the entity for auditing; and
  - (ii) the municipality exercising ownership control over that entity;
- (d) submit within one month after receiving the report of the auditors on those financial statements to the municipality concerned and, if the Auditor-General did not perform the audit of the financial statements, also to the Auditor-General –

- (i) an annual report on the activities of that entity during that financial year;
  - (ii) the financial statements for that financial year after the statements have been audited; and
  - (iii) the report of the auditors on those statements.
- (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;
  - (b) include particulars of -
    - (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;
    - (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; and
    - (v) any other matters that may be prescribed; and
  - (c) include the financial statements of any subsidiaries.

**Annual report and financial statements of municipalities controlling municipal entities**

**50.** The accounting officer of a municipality which exercises ownership control over one or more municipal entities must, in accordance with generally recognised accounting practice –

- (a) prepare consolidated financial statements for each financial year in respect of –
  - (i) the municipality; and
  - (ii) all municipal entities under the ownership control of the municipality; and
- (b) reflect in those statements any financial stake the municipality or such municipal entity may have in any other undertakings.

### **Process**

**51.** (1) The accounting officer of a municipality must submit the consolidated financial statements referred to in section **50** to the Auditor-General for auditing within two months after the end of the financial year.

(2) The Auditor-General must audit the consolidated financial statements and submit an audit report on the statements to the municipality, the National Treasury and the provincial treasury concerned within three months of receipt of the statements.

(3) The municipal manager, within one month of receiving the audit report from the Auditor-General, must –

- (a) table in the municipal council an annual report on the activities of the municipality and the municipal entities concerned during that financial year, a copy of the consolidated financial statements and the audit report; and
- (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.

(4) The annual report and audited consolidated financial statements referred to in subsection (3) must—

- (a) fairly present the state of affairs of the municipality and the municipal entities concerned, 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; and
- (b) include particulars of –
  - (i) any material losses through criminal conduct, any unauthorised expenditure by the municipality and any irregular expenditure by municipal entities under the ownership control of the municipality, that occurred during the financial year;
  - (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; and
  - (iv) any other matters that may be prescribed.

(5) (a) Representatives of the Auditor-General, the relevant provincial treasury and the relevant provincial department are entitled to attend and to speak at a meeting of the municipal council 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.

(b) The municipal manager must –

- (i) give written notice of such meetings to the Auditor-General, the relevant provincial treasury and the relevant provincial department; and
- (ii) submit copies of the minutes of these meetings to the Auditor-General, the relevant provincial treasury and the relevant provincial department.

(6) The consolidated financial statements and audit report must be made public when tabled in the municipal council.

(7) The MEC for finance in the province concerned, without delay, must submit copies of the consolidated financial statements and the audit report and any particulars of corrective action referred to in subsection (3) (b) (ii) to the relevant provincial legislature.

### **Consequences of non-compliance**

**52.** If the municipal manager fails to submit financial statements to the Auditor-General or to table financial statements and the Auditor-General's audit report on those statements in the municipal council in accordance with section **48** or **51** –

- (a) the municipal manager must promptly table in the council a written explanation setting out the reasons why they were not submitted;
- (b) the Auditor-General may issue a special report on the delay; 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.

## ***Part 2: Auditing of Municipalities***

### **Audit requirements**

**53.** (1) The accounts, annual financial statements and financial management 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), and this Act.

### **Withholding of funds**

**54.** 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 section 53 (3), the Minister may withhold the transfer of funds from the National Revenue Fund to the municipality.

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

### **Appointment of auditors**

**55.** (1) The annual financial statements and financial management of a municipal entity must be audited annually by—

- (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.

(2) A municipal entity may appoint, as its auditor, a person referred to in subsection (1) (b) only with the approval of the Auditor-General.

#### **Discharge of auditors**

**56.** (1) A municipal entity may not discharge an auditor appointed by it in terms of section **55** (2) before the expiry of that auditor's term of appointment except with the approval of the municipal council which control that municipal entity and the Auditor-General.

(2) 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 municipal council or councils which control that municipal entity and the Auditor-General within 20 days of receipt of the notice.

(3) The Auditor-General must report any discharge of an auditor in terms of this section to the provincial legislature concerned.

### **Duties and powers of auditors**

**57.** (1) An auditor appointed in terms of section **55** (2) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

(2) In exercising the powers and performing the duties as auditor of a municipal entity, the auditor—

- (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.

(3) An auditor appointed in terms of section **55** (2) 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 **55** (2) –

- (a) must receive 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 public entity.

## **Reports of auditor**

**58.** (1) The report of an auditor appointed in terms of section **55** (2) 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 **49** (1) (a) applied on a basis consistent with that of the preceding year;
- (b) if required by the Auditor-General, the performance information furnished in terms of subsection **49** (2) (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and
- (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 municipal council or councils which control the municipal entity concerned the results of any investigation carried out under section **57** (2) (c); and
- (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.

(3) The auditor must submit copies of the report to—

- (a) the municipal entity concerned;
- (b) the municipal council which control that municipal entity;

- (c) the National Treasury; and
- (d) the provincial treasury concerned.

### **Duties and powers of Auditor-General**

**59.** (1) The Auditor-General may—

- (a) conduct an appropriate audit and report thereon if the Auditor-General considers it to be in the public interest or upon the receipt of a credible complaint; and
- (b) recover the cost of the investigation or audit from the municipal entity concerned.

(2) An audit in terms of section (1) may be carried out either by the Auditor-General or a person appointed by the Auditor-General.

(3) If the Auditor-General issues a special report in terms of subsection (1) or (2) –

- (a) the report must promptly be tabled in the municipal council responsible for the municipal entity concerned; and
- (b) the Auditor-General must submit a copy of the report to –
  - (i) the National Treasury; and
  - (ii) the provincial treasury concerned.

(4) The Auditor-General may—

- (a) claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the municipal entity concerned; and

- (b) annually report to Parliament on specific and general findings regarding the accountability of municipal entities.

## **CHAPTER 10**

### **FINANCIAL EMERGENCIES**

**(Sections 60 – 77 moved to Appendix IV of the Policy Framework for  
Municipal Borrowing and Financial Emergencies as it is subject to enactment  
of a constitutional amendment)**

## **CHAPTER 11**

### **GENERAL TREASURY MATTERS**

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

**78.** (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 and municipal entities in terms of this Act;
- (b) financial management and internal control;
- (c) a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective, which may include provisions disallowing councillors to be members of municipal tender boards or committees;
- (d) the establishment by municipalities of, and control over, internal trading entities and municipal entities;
- (e) the transfer of assets from a municipality to a municipal entity under its ownership control or from such entity to the municipality;
- (f) the alienation, letting or disposal of assets by municipalities;
- (g) audit committees, their appointment and their functioning;
- (h) internal audit components and their functioning;
- (i) costing framework for municipal activities;
- (j) the information to be disclosed when a municipality or municipal entity incurs debt;
- (k) 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;

- (l) the prospectus or prescribed documents required for the issuing or trading of municipal debt instruments;
- (m) the circumstances under which further or specific disclosures are required after money has been borrowed by a municipality or public entity;
- (n) specific facts to be disclosed upon the occurrence of events material to decisions of prospective lenders and investors;
- (o) the circumstances under which documentation or information pertaining to municipal debt need to be lodged or registered;
- (p) the establishment of a registry for the registration of prescribed documentation and information pertaining to municipal borrowing;
- (u) the administration of this Act; and
- (v) 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.

- (3) A regulation, instruction or guideline in terms of this section may –
- (a) differentiate between different categories of –
    - (i) municipalities;
    - (ii) municipal entities; or
    - (iii) accounting officers; or
    - (iv) accounting authorities; or
  - (b) be limited in its application to a specific category of –
    - (i) municipalities;

- (ii) municipal entities;
- (iii) accounting officers; **or**
- (iv) accounting authorities.

### **Audit committees**

**79.** (1) An audit committee –

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

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

**80.** Draft regulations in terms of section **78** must be published for public comment in the national *Government Gazette* before their enactment.

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

**81.** 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 and must promptly inform the Auditor-General in writing when it does so.

## CHAPTER 12

### FINANCIAL MISCONDUCT

#### *Part 1: Disciplinary proceedings*

##### **Financial misconduct by municipal officials**

**82.** (1) The accounting officer of a municipality commits an act of financial misconduct if that accounting officer wilfully or negligently—

- (a) fails to comply with a requirement of section **29, 30, 32, 33, 48 or 50**; or
- (b) makes or permits an unauthorised expenditure.

(2) An official of a municipality to whom a power or duty is assigned in terms of section **33** commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

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

**83.** (1) The accounting authority of a municipal entity commits an act of financial misconduct if that accounting authority wilfully or negligently—

- (a) fails to comply with a requirement of section **42, 43 or 49**; 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 **44** commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

(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.

### **Applicable legal regime for disciplinary proceedings**

**84.** A charge of financial misconduct against an accounting officer or an official referred to in section **82** (2) or **83** (2) or an accounting authority or a member of an accounting authority or an official referred to in section **83** (3), must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations made by the Minister in terms of section **85**.

### **Regulations on financial misconduct procedures**

- 85.** (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—
    - (i) particulars of the alleged financial misconduct; and
    - (ii) the steps taken in connection with such financial misconduct;
  - (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 circumstances in which a disciplinary board which hears a charge of financial misconduct must include a person whose name appears on a list of persons with expertise in municipal finances or public accounting compiled by the National Treasury;
- (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.

(2) A regulation in terms of subsection (1) may –

- (a) differentiate between different categories of –
  - (i) municipalities;
  - (ii) municipal entities;
  - (iii) accounting officers;
  - (iv) accounting authorities; and
  - (v) officials; and
- (b) be limited in its application to a particular category of –
  - (i) municipalities;
  - (ii) municipal entities;
  - (iii) accounting officers;
  - (iv) accounting authorities; or
  - (v) officials.

## ***Part 2: Criminal proceedings***

### **Offences and penalties**

**86.** (1) An accounting officer 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 accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section **29, 30** or **33**.

(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 **42** or **43**.

(3) 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 two years, if that councillor influences the municipal manager of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act.

(4) 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 **22(4)**;
- (c) fails to comply with section **26**; or

## **CHAPTER 13**

### **MISCELLANEOUS**

#### **Limitation of liability**

**87.** No person shall be liable in respect of anything done in good faith under this Act.

#### **Exemptions**

**88.** (1) The Minister, by notice in the national *Government Gazette*, may exempt any municipality or municipal entity, or any category of municipality or municipal public entity, from any specific provision of this Act for a period and on conditions determined in the notice.

(2) A notice granting an exemption from a requirement of this Act that something must be done before a specific date may specify a more lenient date for compliance with the requirement.

#### **Transitional provisions**

**89.** (1) Anything done in terms of a provision repealed by section **90** which can be done in terms of a provision of this Act, must be regarded as having been done by in terms of this Act.

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

- (a) the name and address of the entity;
- (b) the purpose, extent and other particulars of the interest; and

- (c) whether the entity is under the ownership control of the municipality.

### **Amendment of legislation**

**90.** (1) Section 10G of the Local Government Transition Act, 1993 (Act 209 of 1993), and section 26 of the Promotion of Local Government Act are hereby repealed.

(2) Schedule 5 of the Municipal Structures Act is hereby amended by the insertion in item 11 after paragraph (a) of the following paragraph:

“(A) interfere in the financial management responsibilities of the accounting officer and chief financial officer of the municipality;”.

### **Short title and commencement**

**91.** This Act is called the Municipal Finance Management Act, 2000, and takes effect on 1 July 2001 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.

## **MEMORANDUM ON THE OBJECTS OF THE MUNICIPAL FINANCE MANAGEMENT BILL**

### **Introduction**

Local government financial management is currently legislated for by the Local Government Transition Act, Act 209 of 1993 (LGTA). This Act which regulated the transitional phase is destined for repeal after the next local government elections. The Municipal Systems Bill that deals primarily with administrative issues will supersede part of the LGTA. The issues relating to financial management will be replaced by the Municipal Finance Management Bill. Some of the matters dealt with in the Municipal Finance Management Bill have a longer term impact, but a number are also particularly important for the immediate transitional period. The Municipal Finance Management Bill is a critical element in the transformation of local government that is currently underway within the policy framework established by the White Paper on Local 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), the implementation of which is currently being phased in. The Municipal Finance Management Bill is the equivalent legislation 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 concepts and outlines who the legislation applies to as well as conditions under which amendments 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 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 a Revenue Fund, into which all monies received by

municipalities must be paid. The municipal manager is made accountable for the Revenue Fund 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 local governments.

**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 passed 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 passing 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** defines the responsibilities of officials involved in municipalities' financial management. The municipal manager is designated as a municipality's accounting officer, 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 accounting officer. Part 2 of the chapter sets out conditions for the delegation of powers and duties by municipal accounting officers to other officials and outlines the implications this has for such other officials.

**Chapter 7** 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 them.

**Chapter 8** allows municipalities to retain or establish a variety of corporate 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 9** outlines requirements and procedures for local governments' financial statements and auditing. The municipal manager must, in accordance with generally recognised accounting practice, ensure that annual consolidated financial statements are issued and submitted to the Auditor-General and the national and relevant provincial Treasury. The relevant MECs must, in turn, submit copies of the statements, the audit report and particulars of corrective action to their provincial legislatures. Stringent conditions are set to ensure compliance by all relevant parties with these requirements.

**Chapter 10 ( Removed as it is subject to the passage of a constitutional amendment)**

**Chapter 11** 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 12** 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 accounting officers, accounting authorities and officials.

**Chapter 13** 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 and for repeal thereof.

## **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.