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- (b) the Auditor-General's audit report in terms of section 126(3) on those financial statements;
- (c) the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Municipal Systems Act;
- (d) the Auditor-General's audit report in terms of section 45(b) of the Municipal Systems Act; 5
- (e) an assessment by the municipality's accounting officer of any arrears on municipal taxes and service charges;
- (f) an assessment by the municipality's accounting officer of the municipality's performance against the measurable performance objectives referred to in section 17(3)(b) for revenue collection from each revenue source and for each vote in the municipality's approved budget for the relevant financial year; 10
- (g) particulars of any corrective action taken or to be taken in response to issues raised in the audit reports referred to in paragraphs (b) and (d);
- (h) any explanations that may be necessary to clarify issues in connection with the financial statements; 15
- (i) any information as determined by the municipality;
- (j) any recommendations of the municipality's audit committee; and
- (k) any other information as may be prescribed.
- (4) The annual report of a municipal entity must include— 20
- (a) the annual financial statements of the entity, as submitted to the Auditor-General for audit in terms of section 126(2);
- (b) the Auditor-General's audit report in terms of section 126(3) on those financial statements;
- (c) an assessment by the entity's accounting officer of any arrears on municipal taxes and service charges; 25
- (d) an assessment by the entity's accounting officer of the entity's performance against any measurable performance objectives set in terms the service delivery agreement or other agreement between the entity and its parent municipality; 30
- (e) particulars of any corrective action taken or to be taken in response to issues raised in the audit report referred to in paragraph (b);
- (f) any information as determined by the entity or its parent municipality;
- (g) any recommendations of the audit committee of the entity or of its parent municipality; and 35
- (h) any other information as may be prescribed.

Preparation of financial statements

122. (1) Every municipality and every municipal entity must for each financial year prepare annual financial statements which—

- (a) fairly presents the state of affairs of the municipality or entity, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results, and its financial position as at the end of the financial year; and 40
- (b) disclose the information required in terms of sections 123, 124 and 125. 45

(2) A municipality which has sole control of a municipal entity, or which has effective control within the meaning of the Municipal Systems Act of a municipal entity which is a private company, must in addition to complying with subsection (1), prepare consolidated annual financial statements incorporating the annual financial statements of the municipality and of such entity. Such consolidated annual financial statements must comply with any requirements as may be prescribed. 50

(3) Both annual financial statements and consolidated annual financial statements must be prepared in accordance with generally recognised accounting practice prescribed in terms of section 91(1)(b) of the Public Finance Management Act.

Disclosures on intergovernmental and other allocations

- 123.** (1) The annual financial statements of a municipality must disclose information on—
- (a) any allocations received by the municipality from—
 - (i) an organ of state in the national or provincial sphere of government; or 5
 - (ii) a municipal entity or another municipality;
 - (b) any allocations made by the municipality to—
 - (i) a municipal entity or another municipality; or
 - (ii) any other organ of state;
 - (c) how any allocations referred to in paragraph (a) were spent, per vote, 10
excluding allocations received by the municipality as its portion of the equitable share or where prescribed otherwise because of the nature of the allocation;
 - (d) whether the municipality has complied with the conditions of—
 - (i) any allocations made to the municipality in terms of section 214(1)(c) of 15
the Constitution; and
 - (ii) any allocations made to the municipality other than by national organs of state;
 - (e) the reasons for any non-compliance with conditions referred to in paragraph 20
(d); and
 - (f) whether funds destined for the municipality in terms of the annual Division of Revenue Act were delayed or withheld, and the reasons advanced to the municipality for such delay or withholding.
- (2) The annual financial statements of a municipal entity must disclose information on— 25
- (a) any allocations received by the entity from any municipality or other organ of state;
 - (b) any allocations made by the entity to a municipality or other organ of state; and
 - (c) any other information as may be prescribed. 30

Disclosures concerning councillors, directors and officials

- 124.** (1) The notes to the annual financial statements of a municipality must include particulars of—
- (a) the salaries, allowances and benefits of political office-bearers and councillors of the municipality, whether financial or in kind, including a statement by the 35
accounting officer whether or not those salaries, allowances and benefits are within the upper limits of the framework envisaged in section 219 of the Constitution;
 - (b) any arrears owed by individual councillors to the municipality, or a municipal 40
entity under its sole or shared control, for rates or services and which at any time during the relevant financial year were outstanding for more than 90 days, including the names of those councillors; and
 - (c) the salaries, allowances and benefits of the municipal manager, the chief 45
financial officer, every senior manager and such categories of other officials as may be prescribed.
- (2) The notes to the annual financial statements of a municipal entity must include particulars of the salaries, allowances and benefits of—
- (a) the members of the board of directors of the entity; and
 - (b) the chief executive officer of the entity, every senior manager and such 50
categories of other officials as may be prescribed.

Other compulsory disclosures

- 125.** (1) The notes to the financial statements of a municipality must include—
- (a) a list of all municipal entities under the sole or shared control of the 55
municipality during the financial year and as at the last day of the financial year.
 - (b) the total amount of contributions to organised local government for the financial year, and the amount of any contributions outstanding as at the end of the financial year; and

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- (c) the total amounts paid in audit fees, taxes, levies, duties and pension and medical aid contributions, and whether any amounts were outstanding as at the end of the financial year.
- (2) The notes to the annual financial statements of a municipality or municipal entity must disclose the following information: 5
- (a) In respect of each bank account held by the municipality or entity during the relevant financial year—
- (i) the name of the bank where the account is or was held, and the type of account; and
- (ii) year opening and year end balances in each of these bank accounts: 10
- (b) a summary of all investments of the municipality or entity as at the end of the financial year;
- (c) particulars of any contingent liabilities of the municipality or entity as at the end of the financial year;
- (d) particulars of— 15
- (i) any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a municipality, any material unauthorised expenditure, that occurred during the financial year, and whether these are recoverable;
- (ii) any criminal or disciplinary steps taken as a result of such losses or such unauthorised, irregular or fruitless and wasteful expenditures; and 20
- (iii) any material losses recovered or written off;
- (e) particulars of non-compliance with this Act; and
- (f) any other matters that may be prescribed.
- Submission and auditing of annual financial statements** 25

- 126.** (1) The accounting officer of a municipality—
- (a) must prepare the annual financial statements of the municipality and, within two months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General for auditing; and
- (b) must in addition, in the case of a municipality referred to in section 122(2), 30
prepare consolidated annual financial statements in terms of that section and, within three months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General for auditing.
- (2) The accounting officer of a municipal entity must prepare the annual financial statements of the entity and, within two months after the end of the financial year to which those statements relate, submit the statements to— 35
- (a) the parent municipality of the entity; and
- (b) the Auditor-General, for auditing.
- (3) The Auditor-General must—
- (a) audit those financial statements; and 40
- (b) submit an audit report on those statements to the accounting officer of the municipality or entity within three months of receipt of the statements.
- (4) If the Auditor-General is unable to complete an audit within three months of receiving the financial statements from an accounting officer, the Auditor-General must promptly submit a report outlining the reasons for the delay to the relevant municipality 45
or municipal entity and to the relevant provincial legislature and Parliament.
- (5) Once the Auditor-General has submitted an audit report to the accounting officer, no person other than the Auditor-General may alter the audit report or the financial statements to which the audit report relates.

Submission and tabling of annual reports 50

- 127.** (1) The accounting officer of a municipal entity must, within six months after the end of a financial year, or on such earlier date as may be agreed between the entity and its parent municipality, submit the entity's annual report for that financial year to the municipal manager of the entity's parent municipality.

(2) The mayor of a municipality must, within seven months after the end of a financial year, table in the municipal council the annual report of the municipality and of any municipal entity under the municipality's sole or shared control.

(3) If the mayor, for whatever reason, is unable to table in the council the annual report of the municipality, or the annual report of any municipal entity under the municipality's sole or shared control, within seven months after the end of the financial year to which the report relates, the mayor must—

- (a) promptly submit to the council a written explanation referred to in section 133(1)(a) setting out the reasons for the delay, together with any components of the annual report listed in section 121(3) or (4) that are ready; and
- (b) submit to the council the outstanding annual report or the outstanding components of the annual report as soon as may be possible.

(4) The Auditor-General may submit the financial statements and audit report—

- (a) of a municipality directly to the municipal council, the National Treasury, the relevant provincial treasury, the MEC responsible for local government in the province and any prescribed organ of state, if the mayor fails to comply with subsection (2) or (3); or
- (b) of a municipal entity directly to the parent municipality, the National Treasury, the relevant provincial treasury, the MEC responsible for local government in the province and any prescribed organ of state, if the accounting officer of the entity fails to comply with subsection (1).

(5) Immediately after an annual report is tabled in the council in terms of subsection (2), the accounting officer of the municipality must—

- (a) in accordance with section 21A of the Municipal Systems Act—
 - (i) make public the annual report; and
 - (ii) invite the local community to submit representations in connection with the annual report; and
- (b) submit the annual report to the Auditor-General, the relevant provincial treasury and the provincial department responsible for local government in the province.

(6) Subsection (5), with the necessary modifications as the context may require, is also applicable if only components of the annual report are tabled in terms of subsection (3).

Compliance to be monitored

128. The accounting officer of a parent municipality must—

- (a) monitor whether the accounting officer of any municipal entity under the sole or shared control of the municipality has complied with sections 121(1) and 126(2);
- (b) establish the reasons for any non-compliance; and
- (c) promptly report any non-compliance, together with the reasons for such non-compliance, to the council of the parent municipality, the relevant provincial treasury and the Auditor-General.

Oversight reports on annual reports

129. (1) The council of a municipality must consider the annual report of the municipality and of any municipal entity under the municipality's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the council in terms of section 127, adopt an oversight report containing the council's comments on the annual report, which must include a statement whether the council—

- (a) has approved the annual report with or without reservations;
- (b) has rejected the annual report; or
- (c) has referred the annual report back for revision of those components that can be revised.

(2) The accounting officer must—

- (a) attend council and council committee meetings where the annual report is discussed, for the purpose of responding to questions concerning the report; and

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- (b) submit copies of the minutes of those meetings to the Auditor-General, the relevant provincial treasury and the provincial department responsible for local government in the province.
- (3) The accounting officer must in accordance with section 21A of the Municipal Systems Act make public an oversight report referred to in subsection (1) within seven days of its adoption. 5
- (4) The National Treasury may issue guidelines on—
- (a) the manner in which municipal councils should consider annual reports and conduct public hearings; and
- (b) the functioning and composition of any public accounts or oversight committees established by the council to assist it to consider an annual report. 10
- (5) No guidelines issued in terms of subsection (4) are binding on a municipal council unless adopted by the council.
- (6) This section, with the necessary modifications as the context may require, is also applicable if only components of the annual report were tabled in terms of section 127(3). 15

Council meetings open to public and certain public officials

- 130.** (1) The meetings of a municipal council at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, must be open to the public and any organs of state, and a reasonable time must be allowed— 20
- (a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and
- (b) for members of the local community or any organs of state to address the council.
- (2) Representatives of the Auditor-General are entitled to attend, and to speak at, any council meeting referred to in subsection (1). 25
- (3) This section, with the necessary modifications as the context may require, is also applicable if only components of the annual report were tabled in terms of section 127(3).

Issues raised by Auditor-General in audit reports 30

- 131.** (1) A municipality must address any issues raised by the Auditor-General in an audit report. The mayor of a municipality must ensure compliance by the municipality with this subsection.
- (2) The MEC for local government in the province must—
- (a) assess all annual financial statements of municipalities in the province, the audit reports on such statements and any responses of municipalities to such audit reports, and determine whether municipalities have adequately addressed any issues raised by the Auditor-General in audit reports; and 35
- (b) report to the provincial legislature any omission by a municipality to adequately address those issues within 60 days. 40

Submissions to provincial legislatures

- 132.** (1) The following documents must be submitted to the provincial legislature:
- (a) The annual report of each municipality and each municipal entity in the province, or if only components of an annual report were tabled in terms of section 127(3), those components; and 45
- (b) all oversight reports on those annual reports adopted in terms of section 129(1).
- (2) The accounting officer of a municipality must submit the documents referred to in subsection (1)(a) and (b) to the provincial legislature within seven days after the municipal council has adopted the relevant oversight report in terms of section 129(1). 50
- (3) The MEC for local government in a province must monitor whether municipalities in the province comply with subsection (2).
- (4) A provincial legislature may deal with the documents referred to it in terms of subsection (1) in accordance with its constitutional powers.

(5) The National Treasury may issue guidelines on the manner in which provincial legislatures should consider the annual reports of municipalities. No guidelines issued in terms of this subsection are binding on a provincial legislature unless adopted by the legislature.

Consequences of non-compliance with certain provisions

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133. (1) If the accounting officer of a municipality or municipal entity fails to submit financial statements to the Auditor-General in accordance with section 126(1) or (2), or if the mayor fails to table the annual report of the municipality or a municipal entity in the council in accordance with section 127(2)—

- (a) the mayor must promptly table in the council a written explanation setting out the reasons for the failure; 10
 - (b) the Auditor-General, in the case of any failure to submit financial statements for auditing, must promptly—
 - (i) inform the speaker of the council, the National Treasury and the MEC for local government and the MEC for finance in the province of such failure; and 15
 - (ii) issue a special report on the failure to the relevant provincial legislature; and
 - (c) the municipal council—
 - (i) must request the speaker or any other councillor to investigate the reasons for the failure and report to the council; 20
 - (ii) must take appropriate steps to ensure that the financial statements are submitted to the Auditor-General or that the annual report, including the financial statements and the audit report on those statements, is tabled in the council, as the case may be; and 25
 - (iii) may order that disciplinary steps be taken against the accounting officer or other person responsible for the failure;
 - (d) the provincial executive may intervene in the municipality in terms of section 139 of the Constitution;
 - (e) the National Treasury may take appropriate steps against the municipality in terms of section 5(2)(e); and 30
 - (f) the provincial treasury may take appropriate steps against the municipality in terms of section 5(4)(d).
- (2) The Auditor-General must submit to Parliament and the provincial legislatures—
- (a) by no later than 31 October of each year, the names of any municipalities or municipal entities which have failed to submit their financial statements to the Auditor-General in terms of section 126; and 35
 - (b) at quarterly intervals thereafter, the names of any municipalities or municipal entities whose financial statements are still outstanding at the end of each interval. 40

Annual report to Parliament

134. The Cabinet member responsible for local government must, as part of the report referred to in section 48 of the Municipal Systems Act, annually report to Parliament on actions taken by MECs for local government to address issues raised by the Auditor-General in audit reports on financial statements of municipalities and municipal entities. 45

CHAPTER 13

RESOLUTION OF FINANCIAL PROBLEMS

Part 1: Identification of financial problems

Primary responsibility for resolution of financial problems

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135. (1) The primary responsibility to avoid, identify and resolve financial problems in a municipality rests with the municipality itself.

(2) A municipality must meet its financial commitments.

(3) If a municipality encounters a serious financial problem or anticipates problems in meeting its financial commitments, it must immediately—

- (a) seek solutions for the problem;
- (b) notify the MEC for local government and the MEC for finance in the province; and
- (c) notify organised local government.

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Part 2: Provincial interventions

Types of provincial interventions

136. (1) If the MEC for local government in a province becomes aware that there is a serious financial problem in a municipality, the MEC must promptly—

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- (a) consult the mayor of the municipality to determine the facts;
- (b) assess the seriousness of the situation and the municipality's response to the situation; and
- (c) determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution.

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(2) If the financial problem has been caused by or resulted in a failure by the municipality to comply with an executive obligation in terms of legislation or the Constitution, and the conditions for an intervention in terms of section 139(1) of the Constitution are met, the provincial executive must promptly decide whether or not to intervene in the municipality. If the provincial executive decides to intervene, section 137 applies.

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(3) If the municipality has failed to approve a budget or any revenue-raising measures necessary to give effect to the budget, as a result of which the conditions for an intervention in terms of section 139(4) of the Constitution are met, the provincial executive must intervene in the municipality in accordance with section 26.

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(4) If the municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, as a result of which the conditions for an intervention in terms of section 139(5) of the Constitution are met, the provincial executive must intervene in the municipality in accordance with section 139.

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Discretionary provincial interventions

137. (1) If the conditions for a provincial intervention in a municipality in terms of section 139(1) of the Constitution are met and the provincial executive decides in terms of section 136(2) of this Act to intervene in the municipality, the provincial executive may take any appropriate steps referred to in section 139(1) of the Constitution, including—

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- (a) assessing the seriousness of the financial problem in the municipality;
- (b) seeking solutions to resolve the financial problem in a way that would be sustainable and would build the municipality's capacity to manage its own financial affairs;
- (c) determining whether the financial problem, singly or in combination with other problems, is sufficiently serious or sustained that the municipality would benefit from a financial recovery plan and, if so, requesting any suitably qualified person—
 - (i) to prepare an appropriate financial recovery plan for the municipality;
 - (ii) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and
 - (iii) to submit the recovery plan and any recommendations referred to in subparagraphs (i) and (ii) to the MEC for local government in the province within a period determined by the MEC; and
- (d) consulting the mayor of the municipality to obtain the municipality's

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co-operation in resolving the financial problem, and if applicable, implementing the financial recovery plan.

(2) The MEC must submit any assessment in terms of subsection (1)(a), any determination in terms of subsection (1)(c) and a copy of any request in terms of subsection (1)(c), to the municipality and the Cabinet member responsible for local government. 5

(3) This section does not apply to a provincial intervention which is unrelated to a financial problem in a municipality.

Criteria for determining serious financial problems

138. When determining for the purposes of section 137 the seriousness of a financial problem, all relevant facts must be considered, and the following factors, singly or in combination, may indicate a serious financial problem: 10

- (a) The municipality has failed to make payments as and when due;
- (b) the municipality has defaulted on financial obligations for financial reasons;
- (c) the actual current expenditure of the municipality has exceeded the sum of its actual current revenue plus available surpluses for at least two consecutive financial years; 15
- (d) the municipality had an operating deficit in excess of five per cent of revenue in the most recent financial year for which financial information is available;
- (e) the municipality is more than 60 days late in submitting its annual financial statements to the Auditor-General in accordance with section 126; 20
- (f) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the municipality, or has issued an opinion which identifies a serious financial problem in the municipality; 25
- (g) any of the above conditions exists in a municipal entity under the municipality's sole control, or in a municipal entity for whose debts the municipality may be responsible, and the municipality has failed to intervene effectively; or
- (h) any other material condition exists which indicates that the municipality, or a municipal entity under the municipality's sole control, is likely to be unable for financial reasons to meet its obligations. 30

Mandatory provincial interventions arising from financial crises

139. (1) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the provincial executive must promptly— 35

- (a) request the Municipal Financial Recovery Service—
 - (i) to determine the reasons for the crisis in its financial affairs;
 - (ii) to assess the municipality's financial state; 40
 - (iii) to prepare an appropriate recovery plan for the municipality;
 - (iv) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and
 - (v) to submit to the MEC for finance in the province—
 - (aa) the determination and assessment referred to in subparagraphs (i) and (ii) as a matter of urgency; and 45
 - (bb) the recovery plan and recommendations referred to in subparagraphs (iii) and (iv) within a period, not to exceed 90 days, determined by the MEC for finance; and
- (b) consult the mayor of the municipality to obtain the municipality's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan. 50

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(2) The MEC for finance in the province must submit a copy of any request in terms of subsection (1)(a) and of any determination and assessment received in terms of subsection (1)(a)(v)(aa) to—

- (a) the municipality;
- (b) the Cabinet member responsible for local government; and 5
- (c) the Minister.

(3) An intervention referred to in subsection (1) supersedes any discretionary provincial intervention referred to in section 137, provided that any financial recovery plan prepared for the discretionary intervention must continue until replaced by a recovery plan for the mandatory intervention. 10

Criteria for determining serious or persistent material breach of financial commitments

140. (1) When determining whether the conditions for a mandatory intervention referred to in section 139 are met, all relevant facts must be considered.

(2) The following factors, singly or in combination, may indicate that a municipality 15 is in serious material breach of its obligations to meet its financial commitments:

- (a) The municipality has failed to make any payment to a lender or investor as and when due;
- (b) the municipality has failed to meet a contractual obligation which provides security in terms of section 48; 20
- (c) the municipality has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two per cent of the municipality's budgeted operating expenditure; or
- (d) the municipality's failure to meet its financial commitments has impacted, or 25 is likely to impact, on the availability or price of credit to other municipalities.

(3) Any recurring or continuous failure by a municipality to meet its financial commitments which substantially impairs the municipality's ability to procure goods, services or credit on usual commercial terms, may indicate that the municipality is in persistent material breach of its obligations to meet its financial commitments. 30

(4) Subsections (2) and (3) do not apply to—

- (a) disputed obligations as to which there are pending legal actions between the municipality and the creditor, provided that such actions are not instituted to avoid an intervention; or
- (b) obligations explicitly waived by the creditor. 35

Preparation of financial recovery plans

141. (1) Any suitably qualified person may, on request by the provincial executive, prepare a financial recovery plan for a discretionary provincial intervention referred to in section 137.

(2) Only the Municipal Financial Recovery Service may prepare a financial recovery 40 plan for a mandatory provincial intervention referred to in section 139.

(3) When preparing a financial recovery plan, the person referred to in subsection (1) or the Municipal Financial Recovery Service must—

- (a) consult—
 - (i) the relevant municipality; 45
 - (ii) the municipality's principal suppliers and creditors, to the extent they can reasonably be contacted;
 - (iii) the MEC for finance and the MEC for local government in the province; and
 - (iv) organised labour; 50
- (b) take into account—
 - (i) any financial recovery plan that has previously been prepared for the municipality; and
 - (ii) any proposed financial recovery plan, or proposals for a financial recovery plan, that may be advanced by the municipality or any creditor 55 of the municipality; and

- (c) at least 14 days before finalising the plan—
- (i) submit the plan for comment to—
 - (aa) the municipality;
 - (bb) the MEC for finance and the MEC for local government in the province; 5
 - (cc) organised local government in the province;
 - (dd) organised labour; and
 - (ee) any supplier or creditor of the municipality, on request; and
 - (ii) publish a notice in a newspaper of general circulation in the municipality— 10
 - (aa) stating the place, including any website address, where copies of the plan will be available to the public free of charge or at a reasonable price; and
 - (bb) inviting the local community to submit written comments in respect of the plan. 15
- (4) The person charged with preparing the financial recovery plan or the Municipal Financial Recovery Service must—
- (a) consider any comments received pursuant to subsection (3)(c);
 - (b) finalise the financial recovery plan; and
 - (c) submit the final plan to the MEC for finance in the province for approval in terms of section 143. 20

Criteria for financial recovery plans

- 142.** (1) A financial recovery plan must be aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, and such a plan, whether for a mandatory or discretionary intervention— 25
- (a) must—
- (i) identify the financial problems of the municipality;
 - (ii) be designed to place the municipality in a sound and sustainable financial condition as soon as possible;
 - (iii) state the principal strategic objectives of the plan, and ways and means for achieving those objectives; 30
 - (iv) set out a specific strategy for addressing the municipality's financial problems, including a strategy for reducing unnecessary expenditure and increasing the collection of revenue, as may be necessary;
 - (v) identify the human and financial resources needed to assist in resolving financial problems, and where those resources are proposed to come from; 35
 - (vi) describe the anticipated time frame for financial recovery, and milestones to be achieved; and
 - (vii) identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the municipality and actions to be taken by other parties; and 40
- (b) may—
- (i) provide for the liquidation of specific assets, excluding those needed for the provision of the minimum level of basic municipal services; 45
 - (ii) provide for debt restructuring or debt relief in accordance with Part 3 of this Chapter;
 - (iii) provide for special measures to prevent unauthorised, irregular and fruitless and wasteful expenditures and other losses; and
 - (iv) identify any actual and potential revenue sources. 50
- (2) In addition, a financial recovery plan—
- (a) for a mandatory intervention must—
 - (i) set spending limits and revenue targets;
 - (ii) provide budget parameters which bind the municipality for a specified period or until stated conditions have been met; and 55
 - (iii) identify specific revenue-raising measures that are necessary for

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financial recovery, including the rate at which any municipal tax and tariffs must be set to achieve financial recovery; and

- (b) for a discretionary intervention may suggest for adoption by the municipality—
- (i) spending limits and revenue targets; 5
 - (ii) budget parameters for a specified period or until stated conditions have been met; and
 - (iii) specific revenue-raising measures that are necessary for financial recovery.

Approval of financial recovery plans 10

143. (1) On receipt of a financial recovery plan pursuant to a discretionary intervention referred to in section 137, the MEC for local government in the province may approve the recovery plan with or without amendments, as the MEC considers appropriate.

(2) On receipt of a financial recovery plan pursuant to a mandatory intervention referred to in section 139, the MEC for finance must verify that the process set out in section 141 has been followed and that the criteria contained in section 142 are met, and— 15

- (a) if so, approve the recovery plan; or
 - (b) if not, direct what defects must be rectified. 20
- (3) The responsible MEC must submit an approved recovery plan to—
- (a) the municipality;
 - (b) the Minister and the Cabinet member responsible for local government;
 - (c) the Auditor-General; and
 - (d) organised local government in the province. 25

Amendment of financial recovery plans

144. (1) The MEC for local government or the MEC for finance in the province may at any time, but subject to section 141(1) and (2), request any suitably qualified person or the Municipal Financial Recovery Service to prepare an amended financial recovery plan in accordance with the directions of the MEC. 30

(2) Section 141, read with such changes as the context may require, apply to the amendment of a financial recovery plan in terms of this section.

(3) No amendment of a recovery plan may impede the implementation of any court order made or agreement reached in terms of the plan before the amendment.

Implementation of financial recovery plans in discretionary provincial interventions 35

145. (1) If the financial recovery plan was prepared in a discretionary provincial intervention referred to in section 137, the municipality must—

- (a) implement the approved recovery plan; and
- (b) report monthly to the MEC for local government in the province on the implementation of the plan, in such manner as the plan may determine. 40

(2) The financial recovery plan binds the municipality in the exercise of its executive authority, but only to the extent to resolve the financial problems of the municipality.

(3) If the municipality cannot or does not implement the approved recovery plan, the provincial executive may in terms of section 139(1) or (4) of the Constitution take further appropriate steps to ensure implementation of the plan. 45

(4) Sections 34(3) and (4) and 35 of the Municipal Structures Act apply if a provincial executive dissolves a municipal council in terms of subsection (3).

Implementation of financial recovery plans in mandatory provincial interventions

146. (1) If the recovery plan was prepared in a mandatory provincial intervention referred to in section 139—

- (a) the municipality must implement the approved recovery plan;
- (b) all revenue, expenditure and budget decisions must be taken within the framework of, and subject to the limitations of, the recovery plan; and 5
- (c) the municipality must report monthly to the MEC for finance in the province on the implementation of the plan in such manner as the plan may determine.

(2) The financial recovery plan binds the municipality in the exercise of both its legislative and executive authority, including the approval of a budget and legislative measures giving effect to the budget, but only to the extent necessary to achieve the objectives of the recovery plan. 10

(3) The provincial executive must in terms of section 139(5)(b) of the Constitution either—

- (a) dissolve the council of the municipality, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan within the time frames specified in the plan and— 15
 - (i) appoint an administrator until a newly elected council has been declared elected; and 20
 - (ii) approve a temporary budget and revenue-raising measures, and other measures to give effect to the recovery plan and to provide for the continued functioning of the municipality; or
- (b) assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not take executive measures to give effect to the recovery plan. 25

(4) Sections 34(3) and (4) and 35 of the Municipal Structures Act apply when a provincial executive dissolves a municipal council in terms of section 139(5)(b)(i) of the Constitution.

Regular review of provincial interventions

30

147. (1) The MEC for local government or the MEC for finance in a province must at least every three months—

- (a) review any discretionary provincial intervention referred to in section 137 or any mandatory provincial intervention referred to in section 139, including— 35
 - (i) progress with resolving the municipality's financial problems and its financial recovery; and
 - (ii) the effectiveness of any financial recovery plan; and
- (b) submit progress reports and a final report on the intervention to— 40
 - (i) the municipality;
 - (ii) the Minister;
 - (iii) the Cabinet member responsible for local government;
 - (iv) the provincial legislature; and
 - (v) organised local government in the province.

(2) The MEC for local government or the MEC for finance may request the person who prepared the recovery plan, or the Municipal Financial Recovery Service, to assist the MEC in complying with subsection (1). 45

Termination of provincial interventions

148. (1) A discretionary intervention referred to in section 137 must end—

- (a) if it is terminated in terms of section 139(2)(b) of the Constitution; or
- (b) when— 50
 - (i) the municipality is able and willing to fulfil the executive obligation in terms of legislation or the Constitution that gave rise to the intervention; and

- (ii) the financial problem that has been caused by or has caused the failure by the municipality to comply with that obligation is resolved.
- (2) A mandatory intervention referred to in section 139 must end when—
 - (a) the crisis in the municipality's financial affairs has been resolved; and
 - (b) the municipality's ability to meet its obligations to provide basic services or its financial commitments is secured. 5
- (3) When a provincial intervention ends, the MEC for local government or the MEC for finance in the province must notify—
 - (a) the municipality;
 - (b) the Minister, in the case of a mandatory intervention; 10
 - (c) the Cabinet member responsible for local government;
 - (d) any creditors having pending litigation against the municipality;
 - (e) the provincial legislature; and
 - (f) organised local government in the province.

Access to information, records and documents of municipalities 15

149. If a provincial executive intervenes in a municipality in terms of section 139 of the Constitution, the provincial executive and its representatives have access to such information, records and documents of the municipality or of any municipal entity under the sole or shared control of the municipality as may be necessary for the intervention, including for identifying or resolving the financial problem of the municipality. 20

National interventions

- 150.** (1) If the conditions for a provincial intervention in a municipality in terms of section 139(4) or (5) of the Constitution are met and the provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in that section, the national executive must— 25
- (a) consult the relevant provincial executive; and
 - (b) act or intervene in terms of that section in the stead of the provincial executive.
- (2) If the national executive intervenes in a municipality in terms of subsection (1)—
- (a) the national executive assumes for the purposes of the intervention the functions and powers of a provincial executive in terms of this Chapter; 30
 - (b) the Minister assumes for the purposes of the intervention the functions and powers of an MEC for finance in terms of this Chapter; and
 - (c) a reference in this Chapter—
 - (i) to a provincial executive must be read as a reference to the national executive; 35
 - (ii) to an MEC for finance must be read as a reference to the Minister; and
 - (iii) to a provincial intervention must be read as a reference to a national intervention.

Part 3: Debt relief and restructuring

Legal rights 40

- 151.** Except as expressly provided for in this Part, nothing in this Chapter limits or affects —
- (a) the rights of any creditor or other person having a claim against a municipality;
 - (b) any person's access to ordinary legal process in accordance with the common law and relevant legislation; or 45
 - (c) the rights of a municipality or municipal entity, or of the parties to a contract with a municipality or municipal entity, to alternative dispute resolution mechanisms, notice procedures and other remedies, processes or procedures.

Application for stay of legal proceedings

152. (1) If a municipality is unable to meet its financial commitments, it may apply to the High Court for an order to stay, for a period not exceeding 90 days, all legal proceedings, including the execution of legal process, by persons claiming money from the municipality or a municipal entity under the sole control of the municipality. 5

(2) Notice of an application in terms of subsection (1) must be given to—

- (a) the MEC for local government and the MEC for finance in the province;
- (b) the Minister;
- (c) the Cabinet member responsible for local government;
- (d) organised local government; and 10
- (e) to the extent that they can reasonably be contacted, all persons to whom the municipality or the municipal entity owes an amount in excess of a prescribed amount, or if no amount is prescribed, in excess of R100 000.

(3) An application in terms of subsection (1) may for the purposes of section 139(5) of the Constitution be regarded as an admission by the municipality that it is unable to meet its financial commitments. 15

Application for extraordinary relief

153. (1) A municipality may apply to the High Court for an order—

- (a) to stay, for a period not exceeding 90 days at a time, all legal proceedings, including the execution of legal process, by persons claiming money from the municipality; 20
- (b) to suspend the municipality's financial obligations to creditors, or any portion of those obligations, until the municipality can meet those obligations; or
- (c) to terminate the municipality's financial obligations to creditors, and to settle claims in accordance with a distribution scheme referred to in section 155. 25

(2) The Court may make an order in terms of subsection (1) only if—

- (a) the provincial executive has intervened in terms of section 139 and a financial recovery plan to restore the municipality to financial health has been approved for the municipality;
- (b) the financial recovery plan is likely to fail without the protection of such an order; 30
- (c) section 154 has been complied with, in the case of an application for an order referred to in subsection (1)(b); and
- (d) section 155(1) has been complied with, in the case of an application for an order referred to in subsection (1)(c). 35

(3) Notice of an application in terms of subsection (1) must be given to—

- (a) all creditors to whom the municipality owes an amount in excess of a prescribed amount, or if no amount is prescribed, in excess of R100 000, in so far as those creditors can reasonably be contacted;
- (b) the MEC for finance and the MEC for local government in the province; 40
- (c) the Minister;
- (d) the Cabinet member responsible for local government; and
- (e) organised labour.

Suspension of financial obligations

154. Before issuing an order in terms of section 153(1)(b) for the suspension of a municipality's financial obligations to creditors, the court must be satisfied that— 45

- (a) the municipality cannot currently meet its financial obligations to creditors; and
- (b) all assets not reasonably necessary to sustain effective administration or to provide the minimum level of basic municipal services have been or are to be liquidated in accordance with the approved financial recovery plan for the benefit of meeting creditors' claims. 50

Termination of financial obligations and settlement of claims

155. (1) Before issuing an order for the termination of a municipality's financial obligations to creditors in terms of section 153(1)(c), the court must be satisfied that—

- (a) the municipality cannot meet its financial obligations to its creditors and is not likely to be able to do so in the foreseeable future; 5
- (b) all assets not reasonably necessary to sustain effective administration or to provide the minimum level of basic municipal services have been liquidated in accordance with the approved financial recovery plan for the benefit of meeting creditors' claims; and
- (c) all employees have been discharged except those affordable in terms of reasonably projected revenues as set out in the approved financial recovery plan. 10

(2) If the court issues an order referred to subsection (1), the MEC for finance in the province must appoint a trustee to prepare a distribution scheme for the proportional settlement of all legitimate claims against the municipality as at the date of the order. 15
Those claims must be settled against the amount realised from the liquidation of assets referred to in subsection (1)(b).

(3) A distribution scheme must—

- (a) determine the amount available for distribution;
- (b) list all creditors with claims which qualify for the purposes of the distribution scheme, indicating which of those are secured and the manner in which they are secured; and 20
- (c) provide for the distribution of the amount available amongst creditors in the following order of preference:
 - (i) First preference must be given to the rights of secured creditors as to the assets with which they are secured in terms of section 48, provided the security in question was given in good faith and at least six months before the mandatory provincial intervention in terms of section 139 began; 25
 - (ii) thereafter the preferences provided for in the Insolvency Act, 1936 (Act No. 24 of 1936), read with the necessary changes as the context may require, must be applied; and 30
 - (iii) thereafter non-preferent claims must be settled in proportion to the amount of the different claims.

(4) A distribution scheme may not be implemented unless approved by the court. 35

Matters to be prescribed

156. The Minister, acting with the concurrence of the Cabinet member responsible for local government, must by regulation in terms of section 168—

- (a) provide for an equitable process for the recognition of claims against a municipality for the purposes of sharing in a distribution scheme, provided that rejection of any claim does not prevent a creditor from proving the claim in a court; and 40
- (b) provide for public access to a distribution scheme.

Part 4: Municipal Financial Recovery Service**Establishment**

45

157. (1) A Municipal Financial Recovery Service is hereby established as an institution within the public service.

(2) The Municipal Financial Recovery Service forms part of, and functions within, the National Treasury.

Functions and powers**158. The Municipal Financial Recovery Service—**

- (a) must perform the duties and may exercise the powers assigned to the Service in terms of this Act;
- (b) may, on request by the MEC for finance in a province, prepare a financial recovery plan for a municipality or, with the approval of the Director-General of the National Treasury, instruct any suitably qualified person to prepare the plan in accordance with the directions of the Service; 5
- (c) may, on request by the MEC for finance in the province, monitor the implementation of any financial recovery plans that it has prepared, and may recommend such amendments and revisions as are appropriate; 10
- (d) may on request by any municipality that is experiencing financial problems, and in co-ordination with any other provincial or national efforts, assist the municipality to identify the causes of, and potential solutions for, these financial problems; 15
- (e) may, with the approval of the Director-General of the National Treasury, obtain the services of any financial expert to perform any specific work for the Service; and
- (f) may collect information on municipal financial problems and on best practices in resolving such problems. 20

Appointment of Head

159. (1) The Minister must appoint a person as the Head of the Service, subject to subsection (2) and legislation governing the public service.

(2) A person appointed as the Head of the Service holds office in the National Treasury on terms and conditions set out in a written employment contract, which must include terms and conditions setting performance standards. 25

Responsibilities of Head**160. (1)** The Head of the Service—

- (a) is responsible for the performance by the Service of its functions and the exercise of its powers; and 30
- (b) takes all decisions of the Service in the performance of its functions and the exercise of its powers, except those decisions of the Service taken in consequence of a delegation in terms of section 162.

(2) The Head of the Service performs the functions of office subject to the directions of the Director-General of the National Treasury. 35

Staff**161. The staff of the Municipal Financial Recovery Service consists of—**

- (a) the Head of the Service;
- (b) persons in the service of, or contracted by, the National Treasury and designated by the Director-General of the National Treasury for the work of the Service; and 40
- (c) persons seconded from an organ of state or organisation to the Service by agreement between the Director-General and that organ of state or organisation.

Delegations

45

162. (1) The Head of the Service may delegate, in writing, any of the powers or duties of the Service to a member of the staff of the Service.

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

- (a) must be in writing;
- (b) is subject to the limitations or conditions which the Head of the Service may impose; and 50

(c) does not divest the Head of the Service of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The Head of the Service 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. 5

CHAPTER 14

GENERAL TREASURY MATTERS

Liabilities and risks payable in foreign currencies

163. (1) No municipality or municipal entity may incur a liability or risk payable in a foreign currency. 10

(2) Subsection (1) does not apply—

- (a) to debt regulated in terms of section 47; or
- (b) to the procurement of goods or services denominated in a foreign currency but the Rand value of which is determined at the time of procurement, or where this is not possible and risk is low, at the time of payment 15

Forbidden activities

164. (1) No municipality or municipal entity may—

- (a) conduct any commercial activities—
 - (i) otherwise than in the exercise of the powers and functions assigned to it in terms of the Constitution or national or provincial legislation; or 20
 - (ii) outside the borders of the Republic;
- (b) provide a municipal service in an area outside its jurisdiction except with the approval of the council of the municipality having jurisdiction in that area; or
- (c) make loans to— 25
 - (i) councillors or officials of the municipality;
 - (ii) directors or officials of the entity; or
 - (iii) members of the public.

(2) If a municipality or municipal entity on the date on which this section takes effect is engaged in any activity prohibited by subsection (1)(a) or (b) and which is otherwise lawful, the municipality or entity must take all reasonable steps to rectify its position and to comply with that subsection as soon as may be reasonable in the circumstances. 30

Internal audit unit

165. (1) Each municipality and each municipal entity must have an internal audit unit, subject to subsection (3). 35

(2) The internal audit unit of a municipality or municipal entity must—

- (a) prepare a risk-based audit plan and an internal audit program for each financial year;
- (b) advise the accounting officer and report to the audit committee on the implementation of the internal audit plan and matters relating to— 40
 - (i) internal audit;
 - (ii) internal controls;
 - (iii) accounting procedures and practices;
 - (iv) risk and risk management;
 - (v) performance management; 45
 - (vi) loss control; and
 - (vii) compliance with this Act, the annual Division of Revenue Act and any other applicable legislation; and

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(c) perform such other duties as may be assigned to it by the accounting officer.

(3) The internal audit function referred to in subsection (2) may be outsourced if the municipality or municipal entity requires assistance to develop its internal capacity and the council of the municipality or the board of directors of the entity has determined that this is feasible or cost-effective.

5

Audit committees

166. (1) Each municipality and each municipal entity must have an audit committee, subject to subsection (6).

(2) An audit committee is an independent advisory body which must—

(a) advise the municipal council, the political office-bearers, the accounting officer and the management staff of the municipality, or the board of directors, the accounting officer and the management staff of the municipal entity, on matters relating to—

- (i) internal financial control and internal audits; 15
- (ii) risk management; 15
- (iii) accounting policies; 15
- (iv) the adequacy, reliability and accuracy of financial reporting and information; 15
- (v) performance management; 20
- (vi) effective governance; 20
- (vii) compliance with this Act, the annual Division of Revenue Act and any other applicable legislation; 20
- (viii) performance evaluation; and
- (ix) any other issues referred to it by the municipality or municipal entity;

(b) review the annual financial statements to provide the council of the municipality or, in the case of a municipal entity, the council of the parent municipality and the board of directors of the entity, with an authoritative and credible view of the financial position of the municipality or municipal entity, its efficiency and effectiveness and its overall level of compliance with this Act, the annual Division of Revenue Act and any other applicable legislation; 25

(c) respond to the council on any issues raised by the Auditor-General in the audit report; 30

(d) carry out such investigations into the financial affairs of the municipality or municipal entity as the council of the municipality, or in the case of a municipal entity, the council of the parent municipality or the board of directors of the entity, may request; and 35

(e) perform such other functions as may be prescribed.

(3) In performing its functions, an audit committee—

(a) has access to the financial records and other relevant information of the municipality or municipal entity; and 40

(b) must liaise with—

- (i) the internal audit unit of the municipality; and
- (ii) the person designated by the Auditor-General to audit the financial statements of the municipality or municipal entity.

(4) An audit committee must— 45

(a) consist of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be; and

(b) meet as often as is required to perform its functions, but at least four times a year. 50

(5) The members of an audit committee must be appointed by the council of the municipality or, in the case of a municipal entity, by the council of the parent municipality. One of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee. 55

(6) A single audit committee may be established for—

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- (a) a district municipality and the local municipalities within that district municipality; and
- (b) a municipality and municipal entities under its sole control.

Councillors' remuneration

167. (1) A municipality may remunerate its political office-bearers and members of its political structures, but only— 5

- (a) within the framework of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998), setting the upper limits of the salaries, allowances and benefits for those political office-bearers and members; and
- (b) in accordance with section 219(4) of the Constitution. 10

(2) Any remuneration paid or given in cash or in kind to a person as a political office-bearer or as a member of a political structure of a municipality otherwise than in accordance with subsection (1), including any bonus, bursary, loan, advance or other benefit, is an irregular expenditure, and the municipality—

- (a) must, and has the right to, recover that remuneration from the political office-bearer or member; and 15
- (b) may not write off any expenditure incurred by the municipality in paying or giving that remuneration.

(3) The MEC for local government in a province must report to the provincial legislature— 20

- (a) any transgressions of subsection (1); and
- (b) any non-compliance with sections 17(3)(k)(i) and (ii) and 124(1)(a).

Treasury regulations and guidelines

168. (1) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may make regulations or guidelines applicable to municipalities and municipal entities, regarding— 25

- (a) any matter that may be prescribed in terms of this Act;
- (b) financial management and internal control;
- (c) a framework for regulating the exercise of municipal fiscal and tariff-fixing powers; 30
- (d) a framework regulating the financial commitments of municipalities and municipal entities in terms of public-private partnership agreements;
- (e) the establishment by municipalities of, and control over— 35
 - (i) municipal entities; and
 - (ii) business units contemplated in section 76(a)(ii) of the Municipal Systems Act;
- (f) the safe-guarding of the financial affairs of municipalities and of municipal entities when assets, liabilities or staff are transferred from or to a municipality or a municipal entity;
- (g) the alienation, letting or disposal of assets by municipalities or municipal entities; 40
- (h) internal audit units and their functioning;
- (i) the information to be disclosed when municipalities or municipal entities issue or incur debt and the manner in which such information must be disclosed, including by way of a prospectus or other document; 45
- (j) the circumstances under which further or specific disclosures are required after money has been borrowed by a municipality or municipal entity;
- (k) the circumstances under which documentation or information pertaining to municipal debt must be lodged or registered;
- (l) the establishment of a registry for the registration of documentation and information pertaining to municipal borrowing; 50
- (m) the settlement of claims against a municipality following an order of court in terms of section 153;
- (n) the information that must be placed on the websites of municipalities;
- (o) a framework regulating investments by municipal entities; and 55
- (p) any other matter that may facilitate the enforcement and administration of this Act.

(2) A regulation or guideline in terms of this section may—

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- (a) differentiate between different—
- (i) kinds of municipalities, which may, for the purposes of this section, be defined either in relation to categories, types or budgetary size of municipalities or in any other manner;
 - (ii) categories of municipal entities; 5
 - (iii) categories of accounting officers; or
 - (iv) categories of officials; or
- (b) be limited in its application to a particular—
- (i) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of 10 municipality or in any other manner;
 - (ii) category of municipal entities;
 - (iii) category of accounting officers; or
 - (iv) category of officials.
- (3) No guidelines issued in terms of subsection (1) are binding on— 15
- (a) a municipality unless adopted by its council; or
 - (b) a municipal entity unless adopted by the council of the entity's parent municipality.

Consultative processes before promulgation of regulations

- 169.** (1) Before regulations in terms of section 168 are promulgated, the Minister 20 must—
- (a) consult organised local government on the substance of those regulations; and
 - (b) publish the draft regulations in the *Government Gazette* for public comment.
- (2) Regulations made in terms of section 168 must be submitted to Parliament for parliamentary scrutiny at least 30 days before their promulgation. 25

Departures from treasury regulations or conditions

- 170.** (1) The National Treasury may on good grounds approve a departure from a treasury regulation or from any condition imposed in terms of this Act.
- (2) Non-compliance with a regulation made in terms of section 168, or with a condition imposed by the National Treasury in terms of this Act, may on good grounds 30 shown be condoned by the Treasury.

CHAPTER 15**FINANCIAL MISCONDUCT***Part 1: Disciplinary proceedings***Financial misconduct by municipal officials** 35

- 171.** (1) The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently—
- (a) contravenes a provision of this Act;
 - (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality; 40
 - (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
 - (d) provides incorrect or misleading information in any document which in terms of a requirement of this Act must be—
 - (i) submitted to the mayor or the council of the municipality, or to the 45 Auditor-General, the National Treasury or other organ of state; or
 - (ii) made public.
- (2) The chief financial officer of a municipality commits an act of financial misconduct if that officer deliberately or negligently—
- (a) fails to carry out a duty delegated to that officer in terms of section 79 or 50 81(1)(e);

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- (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81(1)(e);
- (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d). 5
- (3) A senior manager or other official of a municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently— 10
- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d). 15
- (4) A municipality must—
- (a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and 20
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act. 25

Financial misconduct by officials of municipal entities

- 172.** (1) The accounting officer of a municipal entity commits an act of financial misconduct if that accounting officer deliberately or negligently—
- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipal entity; 30
- (c) makes or permits, or instructs another official of the municipal entity to make, an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of this Act must be— 35
- (i) submitted to the entity's board of directors or parent municipality or to the Auditor-General; or
- (ii) made public.
- (2) A senior manager or other official of a municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 106, commits an act of financial misconduct if that senior manager or official deliberately or negligently— 40
- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty; 45
- (c) makes an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).
- (3) A municipal entity must—
- (a) investigate allegations of financial misconduct against the accounting officer, a senior manager or other official of the entity unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and 50
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, senior manager or official in terms of Schedule 3 of the Municipal Systems Act. 55

Part 2: Criminal proceedings**Offences**

- 173.** (1) The accounting officer of a municipality is guilty of an offence if that accounting officer—
- (a) deliberately or in a grossly negligent way— 5
 - (i) contravenes or fails to comply with a provision of section 61(2)(b), 62(1), 63(2)(a) or (c), 64(2)(a) or (d) or 65(2)(a), (b), (c), (d), (f) or (i);
 - (ii) fails to take reasonable steps to implement the municipality's supply chain management policy referred to in section 111;
 - (iii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or 10
 - (iv) fails to take all reasonable steps to prevent corruptive practices—
 - (aa) in the management of the municipality's assets or receipt of money; or
 - (bb) in the implementation of the municipality's supply chain management policy; 15
 - (b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the municipality or on money received or spent by the municipality; or
 - (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be — 20
 - (aa) submitted to the Auditor-General, the National Treasury or any other organ of state; or
 - (bb) made public.
- (2) The accounting officer of a municipal entity is guilty of an offence if that accounting officer— 25
- (a) deliberately or in a grossly negligent way—
 - (i) contravenes or fails to comply with a provision of section 94(2)(b), 95(1), 96(2), 97(a) or 99(2)(a), (c) or (e);
 - (ii) fails to take all reasonable steps to prevent irregular or fruitless and wasteful expenditure; or 30
 - (iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity's assets, receipt of money or supply chain management system;
 - (b) deliberately misleads or withholds information from the Auditor-General or the entity's parent municipality on any bank accounts of the municipal entity or on money received or spent by the entity; or 35
 - (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be—
 - (aa) submitted to the entity's parent municipality, the Auditor-General, the National Treasury or any other organ of state; or 40
 - (bb) made public.
- (3) A senior manager or other official of a municipality or municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 or 106, is guilty of an offence if that senior manager or official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation. 45
- (4) A councillor of a municipality is guilty of an offence if that councillor—
- (a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act; 50
 - (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of this Act; 55
 - (c) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or

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- (d) interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.
- (5) A councillor, an official of a municipality or municipal entity, a member of the board of directors of a municipal entity or any other person is guilty of an offence if that person deliberately or in a grossly negligent way— 5
- (a) impedes an accounting officer from complying with a provision of this Act;
- (b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a municipality or municipal entity;
- (c) makes a withdrawal in contravention of section 11;
- (d) fails to comply with section 49; 10
- (e) contravenes a provision of section 115(2), 118 or 126(5); or
- (f) provides false or misleading information for the purposes of any document which must in terms of a requirement of this Act be— 15
- (i) submitted to the council, mayor or accounting officer of a municipality or to the Auditor-General or the National Treasury; or
- (ii) made public.

Penalties

174. A person is liable on conviction of an offence in terms of section 173 to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of applicable legislation. 20

Part 3: General**Regulations on financial misconduct procedures and criminal proceedings**

175. (1) The Minister, acting with the concurrence of the Cabinet member responsible for local government, 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 MEC for local government in the province and the Auditor-General, including— 25
- (i) particulars of the alleged financial misconduct; and
- (ii) steps taken in connection with such financial misconduct; 30
- (b) matters relating to internal investigations by municipalities and municipal entities of allegations of financial misconduct;
- (c) the circumstances in which the National Treasury or the MEC for local government in the province may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct; 35
- (d) criteria for the composition and functioning of a disciplinary board which hears a charge of financial misconduct;
- (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 MEC for local government in the province and the Auditor-General; and 40
- (f) any other matters to the extent necessary to enforce the provisions of this Act.
- (2) A regulation in terms of subsection (1) may—
- (a) differentiate between different— 45
- (i) kinds of municipalities, which may, for the purposes of this section, be defined either in relation to categories, types or budgetary size of municipalities or in any other manner;
- (ii) categories of municipal entities;
- (iii) categories of accounting officers; or
- (iv) categories of other officials; or
- (b) be limited in its application to a particular— 50

- (i) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of municipality or in any other manner;
- (ii) category of municipal entities;
- (iii) category of accounting officers; or
- (iv) category of other officials.

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CHAPTER 16

MISCELLANEOUS

Liability of functionaries exercising powers and functions in terms of this Act

176. (1) No municipality or any of its political structures, political office-bearers or officials, no municipal entity or its board of directors or any of its directors or officials, and no other organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of any loss or damage resulting from the exercise of that power or the performance of that function in good faith.

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(2) Without limiting liability in terms of the common law or other legislation, a municipality may recover from a political office-bearer or official of the municipality, and a municipal entity may recover from a director or official of the entity, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office.

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Delays and exemptions

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177. (1) The Minister may by notice in the *Gazette*—

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding five years from the date when this section takes effect; or
- (b) where practicalities impede the strict application of a specific provision of this Act, exempt any municipality or municipal entity from, or in respect of, such provision for a period and on conditions determined in the notice.

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(2) A delay or exemption in terms of subsection (1) may—

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

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(3) To facilitate the restructuring of the electricity industry as authorised by the Cabinet member responsible for such restructuring, the Minister, acting with the concurrence of the Cabinet member responsible for local government and after consultation with organised local government, may, by notice in the *Gazette*, exempt any municipality or municipal entity from any specific provision of this Act for a period of not more than four years and on conditions determined in the notice, provided that such exemption may not be understood as obligating any municipality to transfer any staff, assets or liabilities.

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Transitional provisions

178. (1) Anything done in terms of a provision repealed by section 179(1), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

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(2) All municipalities must within three months of the date on which this section takes effect, submit to the National Treasury a list of—

- (a) all corporate entities in which the municipality or a municipal entity under its sole or shared control has an interest, specifying—
 - (i) the name and address of the corporate entity; 5
 - (ii) the purpose, extent and other particulars of the interest;
 - (iii) if such corporate entity is a municipal entity, whether the entity is under the sole or shared control of the municipality; and
 - (iv) such other information as may be required by the National Treasury;
- (b) all public-private partnerships to which the municipality is a party, with a value of more than one million Rands in total or per annum, specifying— 10
 - (i) the name and physical address of the private party participating in the public-private partnership;
 - (ii) the purpose and other particulars of the public-private partnership; and
 - (iii) such other information as may be required by the National Treasury; and 15
- (c) all other types of contracts of the municipality for a period beyond 1 January 2007 and with a value of more than one million Rands in total or per annum.

Repeal and amendment of legislation

179. (1) The legislation referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule. 20

(2) Despite the repeal of section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), by subsection (1) of this section, the provisions contained in subsections (6), (6A) and (7) of section 10G remain in force until the legislation envisaged in section 229(2)(b) of the Constitution is enacted.

(3) The repeal of the Municipal Accountants Act, 1988 (Act No. 21 of 1988), takes 25 effect on a date determined by the Minister by notice in the *Gazette*.

Short title and commencement

180. (1) This Act is called the Local Government: Municipal Finance Management Act, 2003, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may in terms of subsection (1) be determined for different 30 provisions of the Act.

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(Section 179)**

No. and year of Act	Short title of Act	Extent of repeal or amendment
Act No. 91 of 1983	Promotion of Local Government Affairs Act, 1983	The repeal of section 17(D).
Act No. 21 of 1988	Municipal Accountants Act, 1988	The repeal of the whole.
Act No. 209 of 1993	Local Government Transition Act, 1993	The repeal of section 10G.