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## THE PRESIDENCY

No. 176

13 February 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 56 of 2003: Local Government: Municipal Finance Management Act, 2003.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

(English text signed by the President.)  
(Assented to 9 February 2004.)

# ACT

To secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**SCHEDULE** 35**CHAPTER 1****INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF ACT****Definitions**

1. (1) In this Act, unless the context indicates otherwise— “accounting officer”—	40
(a) in relation to a municipality, means the municipal official referred to in section 60; or	

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- (b) in relation to a municipal entity, means the official of the entity referred to in section 93,  
and includes a person acting as the accounting officer;
- “allocation”**, in relation to a municipality, means—
- (a) a municipality’s share of the local government’s equitable share referred to in section 214(1)(a) of the Constitution; 5
- (b) an allocation of money to a municipality in terms of section 214(1)(c) of the Constitution;
- (c) an allocation of money to a municipality in terms of a provincial budget; or
- (d) any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transaction; 10
- “annual Division of Revenue Act”** means the Act of Parliament which must be enacted annually in terms of section 214 (1) of the Constitution;
- “annual report”**, in relation to a municipality or municipal entity, means an annual report contemplated in section 121; 15
- “approved budget”** means an annual budget—
- (a) approved by a municipal council; or
- (b) approved by a provincial or the national executive following an intervention in terms of section 139 of the Constitution, 20
- and includes such an annual budget as revised by an adjustments budget in terms of section 28;
- “Auditor-General”** means the person appointed as Auditor-General in terms of section 193 of the Constitution, and includes a person—
- (a) acting as Auditor-General; 25
- (b) acting in terms of a delegation by the Auditor-General; or
- (c) designated by the Auditor-General to exercise a power or perform a duty of the Auditor-General;
- “basic municipal service”** means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment; 30
- “board of directors”**, in relation to a municipal entity, has the meaning assigned to it in section 1 of the Municipal Systems Act;
- “Budget Forum”** has the meaning assigned in section 1 of the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997); 35
- “budget-related policy”** means a policy of a municipality affecting or affected by the annual budget of the municipality, including—
- (a) the tariffs policy which the municipality must adopt in terms of section 74 of the Municipal Systems Act;
- (b) the rates policy which the municipality must adopt in terms of legislation regulating municipal property rates; or 40
- (c) the credit control and debt collection policy which the municipality must adopt in terms of section 96 of the Municipal Systems Act;
- “budget year”** means the financial year for which an annual budget is to be approved in terms of section 16(1); 45
- “category”**, in relation to municipalities, means a category A, B or C municipality referred to in section 155(1) of the Constitution;
- “chief financial officer”** means a person designated in terms of section 80(2)(a);
- “councillor”** means a member of a municipal council;
- “creditor”**, in relation to a municipality, means a person to whom money is owing by the municipality; 50
- “current year”** means the financial year which has already commenced, but not yet ended;
- “debt”** means—
- (a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or by the issuance of municipal debt instruments; or 55
- (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 or to assist in performing the duty; 60

- “**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 recovery plan**” means a plan prepared in terms of section 141;
- “**financial statements**”, in relation to municipality or municipal entity, means 5  
statements consisting of at least—
- (a) a statement of financial position;
  - (b) a statement of financial performance;
  - (c) a cash-flow statement;
  - (d) any other statements that may be prescribed; and 10
  - (e) any notes to these statements;
- “**financial year**” means a year ending on 30 June;
- “**financing agreement**” includes any loan agreement, lease, instalment purchase contract or hire purchase arrangement under which a municipality undertakes to repay a long-term debt over a period of time; 15
- “**fruitless and wasteful expenditure**” means expenditure that was made in vain and would have been avoided had reasonable care been exercised;
- “**Head**”, in relation to the Municipal Finance Recovery Service, means a person—
- (a) appointed in terms of section 159 as the Head of the Service; or
  - (b) acting as the Head of the Service; 20
- “**irregular expenditure**”, in relation to a municipality or municipal entity, means—
- (a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170; 25
  - (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
  - (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act 30 No. 20 of 1998); or
  - (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in 35 terms of such policy or by-law,
- but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”;
- “**investment**”, in relation to funds of a municipality, means—
- (a) the placing on deposit of funds of a municipality with a financial institution; 40  
or
  - (b) the acquisition of assets with funds of a municipality not immediately required, with the primary aim of preserving those funds;
- “**lender**”, in relation to a municipality, means a person who provides debt finance to a municipality; 45
- “**local community**” has the meaning assigned to it in section 1 of the Municipal Systems Act;
- “**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 50 municipality;
- “**long-term debt**” means debt repayable over a period exceeding one year;
- “**mayor**”, in relation to—
- (a) a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or 55
  - (b) a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of that Act;
- “**MEC for finance**” means the member of the Executive Council of a province who is responsible for finance in that province; 60
- “**MEC for local government**” means the member of the Executive Council of a province who is responsible for local government in that province;
- “**Minister**” means the Cabinet member responsible for finance;

- “**month**” means one of the 12 months of a calendar year;
- “**multi-jurisdictional service utility**” has the meaning assigned to it in section 1 of the Municipal Systems Act;
- “**municipal council**” or “**council**” means the council of a municipality referred to in section 18 of the Municipal Structures Act; 5
- “**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;
- “**municipal entity**” has the meaning assigned to it in section 1 of the Municipal Systems Act; 10
- “**Municipal Financial Recovery Service**” means the Municipal Financial Recovery Service established by section 157;
- “**municipality**”—
- (a) when referred to as a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; or 15
- (b) when referred to as a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- “**municipal manager**” means a person appointed in terms of section 82(1)(a) or (b) of the Municipal Structures Act; 20
- “**municipal service**” has the meaning assigned to it in section 1 of the Municipal Systems Act;
- “**Municipal Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 25
- “**municipal tariff**” means a tariff for services which a municipality may set for the provision of a service to the local community, and includes a surcharge on such tariff;
- “**municipal tax**” means property rates or other taxes, levies or duties that a municipality may impose; 30
- “**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act;
- “**official**”, in relation to a municipality or municipal entity, means—
- (a) an employee of a municipality or municipal entity; 35
- (b) a person seconded to a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity; or
- (c) a person contracted by a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity otherwise than as an employee; 40
- “**organised local government**” means an organisation recognised in terms of section 2(1) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially;
- “**overspending**”—
- (a) in relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the municipality during a financial year to exceed the total amount appropriated in that year’s budget for its operational or capital expenditure, as the case may be; 45
- (b) in relation to a vote, means causing expenditure under the vote to exceed the amount appropriated for that vote; or 50
- (c) in relation to expenditure under section 26, means causing expenditure under that section to exceed the limits allowed in subsection (5) of that section;
- “**parent municipality**” has the meaning assigned to it in section 1 of the Municipal Systems Act;
- “**past financial year**” means the financial year preceding the current year; 55
- “**political office-bearer**”, in relation to a municipality, means—
- (a) the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive or mayoral committee of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act; or 60
- (b) a councillor referred to in section 57(1) of this Act;
- “**political structure**”, in relation to a municipality, means—
- (a) the council of a municipality; or

- (b) any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act;
- “prescribe”** means prescribe by regulation in terms of section 168;
- “primary bank account”** means a bank account referred to in section 8(1); 5
- “private company”** means a company referred to in sections 19 and 20 of the Companies Act, 1973 (Act No. 61 of 1973);
- “provincial department”** means a department listed in Schedule 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which falls within a provincial administration listed in Schedule 1 to that Act; 10
- “provincial treasury”** means a treasury established in terms of section 17 of the Public Finance Management Act;
- “Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “quarter”** means any of the following periods in a financial year: 15
- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March; or
- (d) 1 April to 30 June;
- “senior manager”**— 20
- (a) in relation to a municipality, means a manager referred to in section 56 of the Municipal Systems Act; or
- (b) in relation to a municipal entity, means a manager directly accountable to the chief executive officer of the entity;
- “security”** means any mechanism intended to secure the interest of a lender or investor, and includes any of the mechanisms mentioned in section 48(2); 25
- “service delivery agreement”** has the meaning assigned to it in section 1 of the Municipal Systems Act;
- “service delivery and budget implementation plan”** means a detailed plan approved by the mayor of a municipality in terms of section 53(1)(c)(ii) for implementing the municipality’s delivery of municipal services and its annual budget, and which must indicate— 30
- (a) projections for each month of—
- (i) revenue to be collected, by source; and
- (ii) operational and capital expenditure, by vote; 35
- (b) service delivery targets and performance indicators for each quarter; and
- (c) any other matters that may be prescribed,
- and includes any revisions of such plan by the mayor in terms of section 54(1)(c);
- “service utility”** has the meaning assigned to it in section 1 of the Municipal Systems Act; 40
- “shared control”**, in relation to a municipal entity, means the rights and powers a municipality has over a municipal entity which is—
- (a) a private company in which effective control as defined in section 1 of the Municipal Systems Act is vested in that municipality and one or more other municipalities collectively; or 45
- (b) a multi-jurisdictional service utility in which that municipality participates;
- “short-term debt”** means debt repayable over a period not exceeding one year;
- “sole control”**, in relation to a municipal entity, means the rights and powers a municipality has over a municipal entity which is—
- (a) a private company in which effective control as defined in section 1 of the Municipal Systems Act is vested in that municipality alone; or 50
- (b) a service utility established by the municipality;
- “standards of generally recognised accounting practice”** means an accounting practice complying with standards applicable to municipalities or municipal entities and issued in terms of Chapter 11 of the Public Finance Management Act; 55
- “this Act”** includes regulations made in terms of section 168 or 175;
- “unauthorised expenditure”**, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes—
- (a) overspending of the total amount appropriated in the municipality’s approved budget; 60
- (b) overspending of the total amount appropriated for a vote in the approved budget;

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- (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or 5
- (f) a grant by the municipality otherwise than in accordance with this Act;
- "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 10
- (b) which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.
- (2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended. 15

**Object of Act**

2. The object of this Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for— 20
- (a) ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;
- (b) the management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings; 25
- (c) budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government;
- (d) borrowing;
- (e) the handling of financial problems in municipalities;
- (f) supply chain management; and 30
- (g) other financial matters.

**Institutions to which Act applies**

3. (1) This Act applies to—
- (a) all municipalities;
- (b) all municipal entities; and 35
- (c) national and provincial organs of state to the extent of their financial dealings with municipalities.
- (2) In the event of any inconsistency between a provision of this Act and any other legislation in force when this Act takes effect and which regulates any aspect of the fiscal and financial affairs of municipalities or municipal entities, the provision of this Act 40 prevails.

**Amendments to 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 only after the Minister and the Financial and Fiscal Commission have been consulted in writing on the contents of the draft legislation, and have responded in writing. 5

**CHAPTER 2****SUPERVISION OVER LOCAL GOVERNMENT FINANCE MANAGEMENT****General functions of National Treasury and provincial treasuries**

5. (1) The National Treasury must— 10
- (a) fulfil its responsibilities in terms of Chapter 13 of the Constitution and this Act;
  - (b) promote the object of this Act as stated in section 2— 15
    - (i) within the framework of co-operative government set out in Chapter 3 of the Constitution; and
    - (ii) when coordinating intergovernmental financial and fiscal relations in terms of the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997), the annual Division of Revenue Act and the Public Finance Management Act; and
  - (c) enforce compliance with the measures established in terms of section 216 (1) of the Constitution, including those established in terms of this Act. 20
- (2) To the extent necessary to comply with subsection (1), the National Treasury may—
- (a) monitor the budgets of municipalities to establish whether they— 25
    - (i) are consistent with the national government's fiscal and macro-economic policy; and
    - (ii) comply with Chapter 4;
  - (b) promote good budget and fiscal management by municipalities, and for this purpose monitor the implementation of municipal budgets, including their expenditure, revenue collection and borrowing; 30
  - (c) monitor and assess compliance by municipalities and municipal entities with—
    - (i) this Act; and
    - (ii) any applicable standards of generally recognised accounting practice and uniform expenditure and revenue classification systems; 35
  - (d) investigate any system of financial management and internal control in any municipality or municipal entity and recommend improvements;
  - (e) take appropriate steps if a municipality or municipal entity commits a breach of this Act, including the stopping of funds to a municipality in terms of section 216(2) of the Constitution if the municipality, or a municipal entity 40
 under the sole or shared control of that municipality, commits a serious or persistent material breach of any measures referred to in that section; and
  - (f) take any other appropriate steps necessary to perform its functions effectively.
- (3) A provincial treasury must in accordance with a prescribed framework—
- (a) fulfil its responsibilities in terms of this Act; 45
  - (b) promote the object of this Act as stated in section 2 within the framework of co-operative government set out in Chapter 3 of the Constitution; and
  - (c) assist the National Treasury in enforcing compliance with the measures established in terms of section 216(1) of the Constitution, including those established in terms of this Act. 50
- (4) To the extent necessary to comply with subsection (3), a provincial treasury—
- (a) must monitor—
    - (i) compliance with this Act by municipalities and municipal entities in the province;

- (ii) the preparation by municipalities in the province of their budgets;
  - (iii) the monthly outcome of those budgets; and
  - (iv) the submission of reports by municipalities in the province as required in terms of this Act;
  - (b) may assist municipalities in the province in the preparation of their budgets; 5
  - (c) may exercise any powers and must perform any duties delegated to it by the National Treasury in terms of this Act; and
  - (d) may take appropriate steps if a municipality or municipal entity in the province commits a breach of this Act.
- (5) The functions assigned to the National Treasury or a provincial treasury in terms of this Act are additional to those assigned to the National Treasury or a provincial treasury in terms of the Public Finance Management Act. 10
- (6) The Minister, as the head of the National Treasury, takes all decisions of the National Treasury in terms of this Act, except those decisions taken as a result of a delegation in terms of section 6(1). 15
- (7) The MEC for finance in a province, as the head of the provincial treasury, takes all decisions of the provincial treasury in terms of this Act, except those decisions taken as a result of a delegation in terms of section 6(4).
- (8) A provincial treasury must submit all information submitted to it in terms of this Act to the National Treasury on a quarterly basis, or when requested. 20

### Delegations by National Treasury

6. (1) The Minister may delegate any of the powers or duties assigned to the National Treasury in terms of this Act to—
- (a) the Director-General of the National Treasury; or
  - (b) the MEC responsible for a provincial department, as the Minister and the MEC may agree. 25
- (2) The Minister may not delegate the National Treasury's power to stop funds to a municipality in terms of section 5(2)(e).
- (3) A delegation in terms of subsection (1)—
- (a) must be in writing; 30
  - (b) is subject to any limitations or conditions which the Minister may impose;
  - (c) may, subject to any such limitations or conditions, authorise—
    - (i) the Director-General of the National Treasury to sub-delegate a delegated power or duty to a staff member of the National Treasury; and
    - (ii) the MEC responsible for the relevant provincial department to sub-delegate a delegated power or duty to a staff member of that department; 35
  - (d) does not divest the National Treasury of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (4) The MEC for finance in a province may delegate any of the powers or duties assigned to a provincial treasury in terms of this Act to the head of the relevant provincial department of which the provincial treasury forms part. 40
- (5) A delegation in terms of subsection (4)—
- (a) must be in writing;
  - (b) is subject to any limitations or conditions which the MEC for finance in the province may impose; 45
  - (c) may, subject to any such limitations or conditions, authorise the relevant head of the provincial department to sub-delegate a delegated power or duty to a staff member of that treasury; and
  - (d) does not divest the provincial treasury of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty. 50
- (6) The Minister or MEC for finance in a province, as may be appropriate, may confirm, vary or revoke any decision taken in consequence of a delegation or

sub-delegation in terms of this section, but 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 bank accounts*

5

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

7. (1) Every municipality must open and maintain at least one bank account in the name of the municipality.

(2) All money received by a municipality must be paid into its bank account or accounts, and this must be done promptly and in accordance with this Chapter and any requirements that may be prescribed. 10

(3) A municipality may not open a bank account—

(a) abroad;

(b) with an institution not registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); or 15

(c) otherwise than in the name of the municipality.

(4) Money may be withdrawn from a municipal bank account only in terms of section 11(1).

##### **Primary bank account**

8. (1) A municipality must have a primary bank account. If a municipality— 20

(a) has only one bank account, that account is its primary bank account; or

(b) has more than one bank account, it must designate one of those bank accounts as its primary bank account.

(2) The following moneys must be paid into a municipality's primary bank account:

(a) All allocations to the municipality, including those made to the municipality for transmission to a municipal entity or other external mechanism assisting the municipality in the performance of its functions; 25

(b) all income received by the municipality on its investments;

(c) all income received by the municipality in connection with its interest in any municipal entity, including dividends; 30

(d) all money collected by a municipal entity or other external mechanism on behalf of the municipality; and

(e) any other moneys as may be prescribed.

(3) A municipality must take all reasonable steps to ensure that all moneys referred to in subsection (2) are paid into its primary bank account. 35

(4) No organ of state in the national, provincial or local sphere of government may transfer an allocation of money referred to in subsection (2) to a municipality except through the municipality's primary bank account. All allocations due by an organ of state to a municipal entity must be made through the parent municipality, or if there are more than one parent municipality, any of those parent municipalities as may be agreed between the parent municipalities. 40

(5) The accounting officer of a municipality must submit to the National Treasury, the relevant provincial treasury and the Auditor-General, in writing, the name of the bank where the primary bank account of the municipality is held, and the type and number of the account. If a municipality wants to change its primary bank account, it may do so only after the accounting officer has informed the National Treasury and the Auditor-General, in writing, at least 30 days before effecting the change. 45

**Bank account details to be submitted to provincial treasuries and Auditor-General**

9. The accounting officer of a municipality must submit to the relevant provincial treasury and the Auditor-General, in writing—

- (a) within 90 days after the municipality has opened a new bank account, the name of the bank where the account has been opened, and the type and number of the account; and 5
- (b) annually before the start of a financial year, the name of each bank where the municipality holds a bank account, and the type and number of each account.

**Control of municipal bank accounts**

10. (1) The accounting officer of a municipality— 10

- (a) must administer all the municipality's bank accounts, including a bank account referred to in section 12 or 48(2)(d);
- (b) is accountable to the municipal council for the municipality's bank accounts; and
- (c) must enforce compliance with sections 7, 8 and 11. 15

(2) The accounting officer may delegate the duties referred to in subsection (1)(c) to the municipality's chief financial officer only.

**Withdrawals from municipal bank accounts**

11. (1) Only the accounting officer or the chief financial officer of a municipality, or any other senior financial official of the municipality acting on the written authority of the accounting officer, may withdraw money or authorise the withdrawal of money from any of the municipality's bank accounts, and may do so only— 20

- (a) to defray expenditure appropriated in terms of an approved budget;
- (b) to defray expenditure authorised in terms of section 26(4);
- (c) to defray unforeseeable and unavoidable expenditure authorised in terms of section 29(1); 25
- (d) in the case of a bank account opened in terms of section 12, to make payments from the account in accordance with subsection (4) of that section;
- (e) to pay over to a person or organ of state money received by the municipality on behalf of that person or organ of state, including— 30
  - (i) money collected by the municipality on behalf of that person or organ of state by agreement; or
  - (ii) any insurance or other payments received by the municipality for that person or organ of state;
- (f) to refund money incorrectly paid into a bank account; 35
- (g) to refund guarantees, sureties and security deposits;
- (h) for cash management and investment purposes in accordance with section 13;
- (i) to defray increased expenditure in terms of section 31; or
- (j) for such other purposes as may be prescribed.

(2) Any authorisation in terms of subsection (1) to a senior financial official to withdraw money or to authorise the withdrawal of money from a bank account must be in accordance with a framework as may be prescribed. The accounting officer may not authorise any official other than the chief financial officer to withdraw money or to authorise the withdrawal of money from the municipality's primary bank account if the municipality has a primary bank account which is separate from its other bank accounts. 45

(3) Money may be withdrawn from a bank account in terms of subsection (1)(b) to (j) without appropriation in terms of an approved budget.

(4) The accounting officer must within 30 days after the end of each quarter—

- (a) table in the municipal council a consolidated report of all withdrawals made in terms of subsection (1)(b) to (j) during that quarter; and 50

- (b) submit a copy of the report to the relevant provincial treasury and the Auditor-General.

### **Relief, charitable, trust or other funds**

- 12.** (1) No political structure or office-bearer of a municipality may set up a relief, charitable, trust or other fund of whatever description except in the name of the municipality. Only the municipal manager may be the accounting officer of any such fund. 5
- (2) A municipality may in terms of section 7 open a separate bank account in the name of the municipality for the purpose of a relief, charitable, trust or other fund.
- (3) Money received by the municipality for the purpose of a relief, charitable, trust or other fund must be paid into a bank account of the municipality, or if a separate bank account has been opened in terms of subsection (2), into that account. 10
- (4) Money in a separate account opened in terms of subsection (2) may be withdrawn from the account without appropriation in terms of an approved budget, but only—
- (a) by or on the written authority of the accounting officer acting in accordance with decisions of the municipal council; and 15
- (b) for the purposes for which, and subject to any conditions on which, the fund was established or the money in the fund was donated.

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

#### **Cash management and investments** 20

- 13.** (1) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may prescribe a framework within which municipalities must—
- (a) conduct their cash management and investments; and
- (b) invest money not immediately required. 25
- (2) A municipality must establish an appropriate and effective cash management and investment policy in accordance with any framework that may be prescribed in terms of subsection (1).
- (3) A bank where a municipality at the end of a financial year holds a bank account, or held a bank account at any time during a financial year, must—
- (a) within 30 days after the end of that financial year notify the Auditor-General, 30
- in writing, of such bank account, including—
- (i) the type and number of the account; and
- (ii) the opening and closing balances of that bank account in that financial year; and
- (b) promptly disclose information regarding the account when so requested by the 35
- National Treasury or the Auditor-General.
- (4) A bank, insurance company or other financial institution which at the end of a financial year holds, or at any time during a financial year held, an investment for a municipality, must—
- (a) within 30 days after the end of that financial year, notify the Auditor-General, 40
- in writing, of that investment, including the opening and closing balances of that investment in that financial year; and
- (b) promptly disclose information regarding the investment when so requested by 45
- the National Treasury or the Auditor-General.

#### **Disposal of capital assets** 45

- 14.** (1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a 50
- meeting open to the public—

- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- (3) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of. 5
- (4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2)(a) and (b) in respect of movable capital assets below a value determined by the council. 10
- (5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.
- (6) This section does not apply to the transfer of a capital asset to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework. 15

#### CHAPTER 4

### MUNICIPAL BUDGETS 20

#### Appropriation of funds for expenditure

15. A municipality may, except where otherwise provided in this Act, incur expenditure only—
- (a) in terms of an approved budget; and
- (b) within the limits of the amounts appropriated for the different votes in an approved budget. 25

#### Annual budgets

16. (1) The council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year.
- (2) In order for a municipality to comply with subsection (1), the mayor of the municipality must table the annual budget at a council meeting at least 90 days before the start of the budget year. 30
- (3) Subsection (1) does not preclude the appropriation of money for capital expenditure for a period not exceeding three financial years, provided a separate appropriation is made for each of those financial years. 35

#### Contents of annual budgets and supporting documents

17. (1) An annual budget of a municipality must be a schedule in the prescribed format—
- (a) setting out realistically anticipated revenue for the budget year from each revenue source; 40
- (b) appropriating expenditure for the budget year under the different votes of the municipality;
- (c) setting out indicative revenue per revenue source and projected expenditure by vote for the two financial years following the budget year;
- (d) setting out— 45
- (i) estimated revenue and expenditure by vote for the current year; and
- (ii) actual revenue and expenditure by vote for the financial year preceding the current year; and
- (e) a statement containing any other information required by section 215(3) of the Constitution or as may be prescribed. 50

(2) An annual budget must generally be divided into a capital and an operating budget in accordance with international best practice, as may be prescribed.

(3) When an annual budget is tabled in terms of section 16(2), it must be accompanied by the following documents:

- (a) Draft resolutions— 5
  - (i) approving the budget of the municipality;
  - (ii) imposing any municipal tax and setting any municipal tariffs as may be required for the budget year; and
  - (iii) approving any other matter that may be prescribed;
- (b) measurable performance objectives for revenue from each source and for each vote in the budget, taking into account the municipality's integrated development plan; 10
- (c) a projection of cash flow for the budget year by revenue source, broken down per month;
- (d) any proposed amendments to the municipality's integrated development plan following the annual review of the integrated development plan in terms of section 34 of the Municipal Systems Act; 15
- (e) any proposed amendments to the budget-related policies of the municipality;
- (f) particulars of the municipality's investments;
- (g) any prescribed budget information on municipal entities under the sole or shared control of the municipality; 20
- (h) particulars of all proposed new municipal entities which the municipality intends to establish or in which the municipality intends to participate;
- (i) particulars of any proposed service delivery agreements, including material amendments to existing service delivery agreements; 25
- (j) particulars of any proposed allocations or grants by the municipality to—
  - (i) other municipalities;
  - (ii) any municipal entities and other external mechanisms assisting the municipality in the exercise of its functions or powers;
  - (iii) any other organs of state; 30
  - (iv) any organisations or bodies referred to in section 67(1);
- (k) the proposed cost to the municipality for the budget year of the salary, allowances and benefits of—
  - (i) each political office-bearer of the municipality;
  - (ii) councillors of the municipality; and 35
  - (iii) the municipal manager, the chief financial officer, each senior manager of the municipality and any other official of the municipality having a remuneration package greater than or equal to that of a senior manager;
- (l) the proposed cost for the budget year to a municipal entity under the sole or shared control of the municipality of the salary, allowances and benefits of— 40
  - (i) each member of the entity's board of directors; and
  - (ii) the chief executive officer and each senior manager of the entity; and
- (m) any other supporting documentation as may be prescribed.

### Funding of expenditure

- 18. (1) An annual budget may only be funded from— 45
  - (a) realistically anticipated revenues to be collected;
  - (b) cash-backed accumulated funds from previous years' surpluses not committed for other purposes; and
  - (c) borrowed funds, but only for the capital budget referred to in section 17(2).
- (2) Revenue projections in the budget must be realistic, taking into account— 50
  - (a) projected revenue for the current year based on collection levels to date; and

(b) actual revenue collected in previous financial years.

### Capital projects

19. (1) A municipality may spend money on a capital project only if—
- (a) the money for the project, excluding the cost of feasibility studies conducted by or on behalf of the municipality, has been appropriated in the capital budget referred to in section 17(2); 5
  - (b) the project, including the total cost, has been approved by the council;
  - (c) section 33 has been complied with, to the extent that that section may be applicable to the project; and
  - (d) the sources of funding have been considered, are available and have not been committed for other purposes. 10
- (2) Before approving a capital project in terms of subsection (1)(b), the council of a municipality must consider—
- (a) the projected cost covering all financial years until the project is operational; and 15
  - (b) the future operational costs and revenue on the project, including municipal tax and tariff implications.
- (3) A municipal council may in terms of subsection (1)(b) approve capital projects below a prescribed value either individually or as part of a consolidated capital programme. 20

### Matters to be prescribed

20. (1) The Minister, acting with the concurrence of the Cabinet member responsible for local government—
- (a) must prescribe the form of the annual budget of municipalities; and
  - (b) may prescribe— 25
    - (i) the form of resolutions and supporting documentation relating to the annual budget;
    - (ii) the number of years preceding and following the budget year for which revenue and expenditure history or projections must be shown in the supporting documentation; 30
    - (iii) inflation projections to be used with regard to the budget;
    - (iv) uniform norms and standards concerning the setting of municipal tariffs, financial risks and other matters where a municipality uses a municipal entity or other external mechanism for the performance of a municipal service or other function; 35
    - (v) uniform norms and standards concerning the budgets of municipal entities; or
    - (vi) any other uniform norms and standards aimed at promoting transparency and expenditure control.
- (2) The Minister may take appropriate steps to ensure that a municipality in the exercise of its fiscal powers in terms of section 229 of the Constitution does not materially and unreasonably prejudice— 40
- (a) national economic policies, particularly those on inflation, administered pricing and equity;
  - (b) economic activities across municipal boundaries; and 45
  - (c) the national mobility of goods, services, capital or labour.

### Budget preparation process

21. (1) The mayor of a municipality must—
- (a) co-ordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget-related policies to ensure that the tabled budget and any revisions of the integrated development plan and budget-related policies are mutually consistent and credible; 50
  - (b) at least 10 months before the start of the budget year, table in the municipal council a time schedule outlining key deadlines for—

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- (i) the preparation, tabling and approval of the annual budget;
  - (ii) the annual review of—
    - (aa) the integrated development plan in terms of section 34 of the Municipal Systems Act; and
    - (bb) the budget-related policies; 5
  - (iii) the tabling and adoption of any amendments to the integrated development plan and the budget-related policies; and
  - (iv) any consultative processes forming part of the processes referred to in subparagraphs (i), (ii) and (iii).
- (2) When preparing the annual budget, the mayor of a municipality must— 10
- (a) take into account the municipality's integrated development plan;
  - (b) take all reasonable steps to ensure that the municipality revises the integrated development plan in terms of section 34 of the Municipal Systems Act, taking into account realistic revenue and expenditure projections for future years;
  - (c) take into account the national budget, the relevant provincial budget, the national government's fiscal and macro-economic policy, the annual Division of Revenue Act and any agreements reached in the Budget Forum; 15
  - (d) consult—
    - (i) the relevant district municipality and all other local municipalities within the area of the district municipality, if the municipality is a local municipality; 20
    - (ii) all local municipalities within its area, if the municipality is a district municipality;
    - (iii) the relevant provincial treasury, and when requested, the National Treasury; and 25
    - (iv) any national or provincial organs of state, as may be prescribed; and
  - (e) provide, on request, any information relating to the budget—
    - (i) to the National Treasury; and
    - (ii) subject to any limitations that may be prescribed, to—
      - (aa) the national departments responsible for water, sanitation, electricity and any other service as may be prescribed; 30
      - (bb) any other national and provincial organ of states, as may be prescribed; and
      - (cc) another municipality affected by the budget.

**Publication of annual budgets** 35

22. Immediately after an annual budget is tabled in a municipal council, the accounting officer of the municipality must—

- (a) in accordance with Chapter 4 of the Municipal Systems Act—
  - (i) make public the annual budget and the documents referred to in section 17(3); and 40
  - (ii) invite the local community to submit representations in connection with the budget; and
- (b) submit the annual budget—
  - (i) in both printed and electronic formats to the National Treasury and the relevant provincial treasury; and 45
  - (ii) in either format to any prescribed national or provincial organs of state and to other municipalities affected by the budget.

**Consultations on tabled budgets**

23. (1) When the annual budget has been tabled, the municipal council must consider any views of— 50

- (a) the local community; and

- (b) the National Treasury, the relevant provincial treasury and any provincial or national organs of state or municipalities which made submissions on the budget.
- (2) After considering all budget submissions, the council must give the mayor an opportunity— 5
- (a) to respond to the submissions; and
- (b) if necessary, to revise the budget and table amendments for consideration by the council.
- (3) The National Treasury may issue guidelines on the manner in which municipal councils should process their annual budgets, including guidelines on the formation of a committee of the council to consider the budget and to hold public hearings. 10
- (4) No guidelines issued in terms of subsection (3) are binding on a municipal council unless adopted by the council.

### Approval of annual budgets

24. (1) The municipal council must at least 30 days before the start of the budget year consider approval of the annual budget. 15
- (2) An annual budget—
- (a) must be approved before the start of the budget year;
- (b) is approved by the adoption by the council of a resolution referred to in section 17(3)(a)(i); and 20
- (c) must be approved together with the adoption of resolutions as may be necessary—
- (i) imposing any municipal tax for the budget year;
- (ii) setting any municipal tariffs for the budget year;
- (iii) approving measurable performance objectives for revenue from each source and for each vote in the budget; 25
- (iv) approving any changes to the municipality's integrated development plan; and
- (v) approving any changes to the municipality's budget-related policies.
- (3) The accounting officer of a municipality must submit the approved annual budget to the National Treasury and the relevant provincial treasury. 30

### Failure to approve budget before start of budget year

25. (1) If a municipal council fails to approve an annual budget, including revenue-raising measures necessary to give effect to the budget, the council must reconsider the budget and again vote on the budget, or on an amended version thereof, within seven days of the council meeting that failed to approve the budget. 35
- (2) The process provided for in subsection (1) must be repeated until a budget, including revenue-raising measures necessary to give effect to the budget, is approved.
- (3) If a municipality has not approved an annual budget, including revenue-raising measures necessary to give effect to the budget, by the first day of the budget year, the mayor must immediately comply with section 55. 40

### Consequences of failure to approve budget before start of budget year

26. (1) If by the start of the budget year a municipal council has not approved an annual budget or any revenue-raising measures necessary to give effect to the budget, the provincial executive of the relevant province must intervene in the municipality in terms of section 139(4) of the Constitution by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the council and— 45
- (a) appointing an administrator until a newly elected council has been declared elected; and 50

- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (2) Sections 34(3) and (4) and 35 of the Municipal Structures Act apply when a provincial executive dissolves a municipal council.
- (3) When approving a temporary budget for a municipality in terms of subsection (1)(b), the provincial executive is not bound by any provision relating to the budget process applicable to a municipality in terms of this Act or other legislation. Such a budget must, after the intervention has ended, be replaced by a budget approved by the newly elected council, provided that the provisions of this Chapter relating to annual budgets are substantially complied with in line with any revised time frames approved by the MEC for finance in the province. 5
- (4) Until a budget for the municipality is approved in terms of subsection (1), funds for the requirements of the municipality may, with the approval of the MEC for finance in the province, be withdrawn from the municipality's bank accounts in accordance with subsection (5). 10
- (5) Funds withdrawn from a municipality's bank accounts in terms of subsection (4)— 15
- (a) may be used only to defray current and capital expenditure in connection with votes for which funds were appropriated in the approved budget for the previous financial year; and 20
- (b) may not—
- (i) during any month, exceed eight per cent of the total amount appropriated in that approved budget for current expenditure, which percentage must be scaled down proportionately if revenue flows are not at least at the same level as the previous financial year; and 25
- (ii) exceed the amount actually available.
- (6) The funds provided for in subsection (4) are not additional to funds appropriated for the budget year, and any funds withdrawn in terms of subsection (5) must be regarded as forming part of the funds appropriated in a subsequently approved annual budget for the budget year. 30

#### **Non-compliance with provisions of this Chapter**

27. (1) The mayor of a municipality must, upon becoming aware of any impending non-compliance by the municipality of any provisions of this Act or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes, inform the MEC for finance in the province, in writing, of such impending non-compliance. 35
- (2) If the impending non-compliance pertains to a time provision, except section 16(1), the MEC for finance may, on application by the mayor and on good cause shown, extend any time limit or deadline contained in that provision, provided that no such extension may compromise compliance with section 16(1). An MEC for finance must— 40
- (a) exercise the power contained in this subsection in accordance with a prescribed framework; and
- (b) promptly notify the National Treasury, in writing, of any extensions given in terms of this subsection, together with the name of the municipality and the reasons. 45
- (3) The mayor of a municipality must, upon becoming aware of any actual non-compliance by the municipality of a provision of this Chapter, inform the council, the MEC for finance and the National Treasury, in writing, of—
- (a) such non-compliance; and
- (b) any remedial or corrective measures the municipality intends to implement to avoid a recurrence. 50
- (4) Non-compliance by a municipality with a provision of this Chapter relating to the budget process or a provision in any legislation relating to the approval of a budget-related policy, does not affect the validity of an annual or adjustments budget.

(5) The provincial executive may intervene in terms of the appropriate provision of section 139 of the Constitution if a municipality cannot or does not comply with a provision of this Chapter, including a provision relating to process.

### Municipal adjustments budgets

28. (1) A municipality may revise an approved annual budget through an adjustments budget. 5

(2) An adjustments budget—

- (a) must adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- (b) may appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for; 10
- (c) may, within a prescribed framework, authorise unforeseeable and unavoidable expenditure recommended by the mayor of the municipality;
- (d) may authorise the utilisation of projected savings in one vote towards spending under another vote; 15
- (e) may authorise the spending of funds that were unspent at the end of the past financial year where the under-spending could not reasonably have been foreseen at the time to include projected roll-overs when the annual budget for the current year was approved by the council; 20
- (f) may correct any errors in the annual budget; and
- (g) may provide for any other expenditure within a prescribed framework.

(3) An adjustments budget must be in a prescribed form.

(4) Only the mayor may table an adjustments budget in the municipal council, but an adjustments budget in terms of subsection (2)(b) to (g) may only be tabled within any prescribed limitations as to timing or frequency. 25

(5) When an adjustments budget is tabled, it must be accompanied by—

- (a) an explanation how the adjustments budget affects the annual budget;
- (b) a motivation of any material changes to the annual budget;
- (c) an explanation of the impact of any increased spending on the annual budget and the annual budgets for the next two financial years; and 30
- (d) any other supporting documentation that may be prescribed.

(6) Municipal tax and tariffs may not be increased during a financial year except when required in terms of a financial recovery plan.

(7) Sections 22(b), 23(3) and 24(3) apply in respect of an adjustments budget, and in such application a reference in those sections to an annual budget must be read as a reference to an adjustments budget. 35

### Unforeseen and unavoidable expenditure

29. (1) The mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget. 40

(2) Any such expenditure—

- (a) must be in accordance with any framework that may be prescribed;
- (b) may not exceed a prescribed percentage of the approved annual budget;
- (c) must be reported by the mayor to the municipal council at its next meeting; 45  
and
- (d) must be appropriated in an adjustments budget.

(3) If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 32 applies.

### Unspent funds

30. The appropriation of funds in an annual or adjustments budget lapses to the extent that those funds are unspent at the end of the financial year to which the budget relates, except in the case of an appropriation for expenditure made for a period longer than that financial year in terms of section 16(3). 5

### Shifting of funds between multi-year appropriations

31. When funds for a capital programme are appropriated in terms of section 16(3) for more than one financial year, expenditure for that programme during a financial year may exceed the amount of that year's appropriation for that programme, provided that— 10

- (a) the increase does not exceed 20 per cent of that year's appropriation for the programme;
- (b) the increase is funded within the following year's appropriation for that programme; 15
- (c) the municipal manager certifies that—
  - (i) actual revenue for the financial year is expected to exceed budgeted revenue; and
  - (ii) sufficient funds are available for the increase without incurring further borrowing beyond the annual budget limit; 20
- (d) prior written approval is obtained from the mayor for the increase; and
- (e) the documents referred to in paragraphs (c) and (d) are submitted to the relevant provincial treasury and the Auditor-General. 25

### Unauthorised, irregular or fruitless and wasteful expenditure

32. (1) Without limiting liability in terms of the common law or other legislation— 25

- (a) a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure; 30
- (b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
- (c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or 35
- (d) any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure— 40

- (a) in the case of unauthorised expenditure, is—
  - (i) authorised in an adjustments budget; or
  - (ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and
- (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council. 45

(3) If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful 50

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expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.

(4) The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of— 5

- (a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;
- (b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and 10
- (c) the steps that have been taken—
  - (i) to recover or rectify such expenditure; and
  - (ii) to prevent a recurrence of such expenditure.

(5) The writing off in terms of subsection (2) of any unauthorised, irregular or fruitless and wasteful expenditure as irrecoverable, is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of this Act relating to such unauthorised, irregular or fruitless and wasteful expenditure. 15

(6) The accounting officer must report to the South African Police Service all cases of alleged—

- (a) irregular expenditure that constitute a criminal offence; and 20
- (b) theft and fraud that occurred in the municipality.

(7) The council of a municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service if—

- (a) the charge is against the accounting officer; or
- (b) the accounting officer fails to comply with that subsection. 25

(8) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may regulate the application of this section by regulation in terms of section 168.

**Contracts having future budgetary implications**

33. (1) A municipality may enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may do so only if— 30

- (a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved— 35
  - (i) has, in accordance with section 21A of the Municipal Systems Act—
    - (aa) made public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract; and
    - (bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and 40
  - (ii) has solicited the views and recommendations of—
    - (aa) the National Treasury and the relevant provincial treasury;
    - (bb) the national department responsible for local government; and 45
    - (cc) if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;
- (b) the municipal council has taken into account— 50
  - (i) the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
  - (ii) the impact of those financial obligations on the municipality's future municipal tariffs and revenue;
  - (iii) any comments or representations on the proposed contract received from the local community and other interested persons; and 55

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- (iv) any written views and recommendations on the proposed contract by the National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a)(ii)(cc); and
- (c) the municipal council has adopted a resolution in which— 5
- (i) it determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
- (ii) it approves the entire contract exactly as it is to be executed; and
- (iii) it authorises the municipal manager to sign the contract on behalf of the municipality. 10
- (2) The process set out in subsection (1) does not apply to—
- (a) contracts for long-term debt regulated in terms of section 46(3);
- (b) employment contracts; or
- (c) contracts— 15
- (i) for categories of goods as may be prescribed; or
- (ii) in terms of which the financial obligation on the municipality is below—
- (aa) a prescribed value; or
- (bb) a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded. 20
- (3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality—
- (i) must be made available in their entirety to the municipal council; and
- (ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000). 25
- (b) Paragraph (a)(i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.
- (4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

## CHAPTER 5 30

## CO-OPERATIVE GOVERNMENT

## Capacity building

34. (1) The national and provincial governments must by agreement assist municipalities in building the capacity of municipalities for efficient, effective and transparent financial management. 35
- (2) The national and provincial governments must support the efforts of municipalities to identify and resolve their financial problems.
- (3) When performing its monitoring function in terms of section 155(6) of the Constitution, a provincial government—
- (a) must share with a municipality the results of its monitoring to the extent that those results may assist the municipality in improving its financial management; 40
- (b) must, upon detecting any emerging or impending financial problems in a municipality, alert the municipality to those problems; and
- (c) may assist the municipality to avert or resolve financial problems. 45
- (4) Non-compliance with this section or any other provision of this Act by the national or a provincial government does not affect the responsibility of a municipality, its political structures, political office-bearers and officials to comply with this Act.

**Promotion of co-operative government by national and provincial institutions**

- 35.** National and provincial departments and public entities must—
- (a) in their fiscal and financial relations with the local sphere of government, promote co-operative government in accordance with Chapter 3 of the Constitution; 5
  - (b) promptly meet their financial commitments towards municipalities;
  - (c) provide timely information and assistance to municipalities to enable municipalities—
    - (i) to plan properly, including in developing and revising their integrated development plans; and 10
    - (ii) to prepare their budgets in accordance with the processes set out in Chapter 4 of this Act; and
  - (d) comply with the Public Finance Management Act, the annual Division of Revenue Act and the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997), to the extent that those Acts regulate intergovernmental relations with the local sphere of government. 15

**National and provincial allocations to municipalities**

**36.** (1) In order to provide predictability and certainty about the sources and levels of intergovernmental funding for municipalities, the accounting officer of a national or provincial department and the accounting authority of a national or provincial public entity responsible for the transfer of any proposed allocations to a municipality, must by no later than 20 January of each year notify the National Treasury or the relevant provincial treasury, as may be appropriate, of all proposed allocations, and the projected amounts of those allocations, to be transferred to each municipality during each of the next three financial years. 20

(2) The Minister or the MEC responsible for finance in a province must, to the extent possible, when tabling the national annual budget in the National Assembly or the provincial annual budget in the provincial legislature, make public particulars of any allocations due to each municipality in terms of that budget, including the amount to be transferred to the municipality during each of the next three financial years. 25 30

**Promotion of co-operative government by municipalities**

- 37.** (1) Municipalities must—
- (a) in their fiscal and financial relations with the national and provincial spheres of government and other municipalities, promote co-operative government in accordance with Chapter 3 of the Constitution and the Intergovernmental Fiscal Relations Act; 35
  - (b) provide budgetary and other financial information to relevant municipalities and national and provincial organs of state; and
  - (c) promptly meet all financial commitments towards other municipalities or national and provincial organs of state. 40

(2) In order to enable municipalities to include allocations from other municipalities in their budgets and to plan effectively for the spending of such allocations, the accounting officer of a municipality responsible for the transfer of any allocation to another municipality must, by no later than 120 days before the start of its budget year, notify the receiving municipality of the projected amount of any allocation proposed to be transferred to that municipality during each of the next three financial years. 45

**Stopping of funds to municipalities**

- 38.** (1) The National Treasury may stop—
- (a) the transfer of funds due to a municipality as its share of the local government's equitable share referred to in section 214(1)(a) of the 50

- Constitution, but only if the municipality commits a serious or persistent breach of the measures established in terms of section 216(1) of the Constitution; or
- (b) the transfer of funds due to a municipality as an allocation referred to in section 214(1)(c) of the Constitution, but only if the municipality or the municipal entity for which the funds are destined—
- (i) commits a serious or persistent breach of the measures established in terms of section 216(1) of the Constitution; or
  - (ii) breaches or fails to comply with any conditions subject to which the allocation is made.
- (2) Before the National Treasury stops the transfer of funds to a municipality in terms of subsection (1)(a) or (b), it must—
- (a) give the municipality an opportunity to submit written representations with regard to the proposed stopping of the funds;
  - (b) inform the MEC for local government in the province; and
  - (c) consult the Cabinet member responsible for the national department making the transfer.
- (3) If the stopping of funds in terms of subsection (1)(a) or (b) affects the provision of basic municipal services in the municipality, the provincial executive must monitor the continuation of those services. Section 139 of the Constitution applies if the municipality cannot or does not fulfil its obligations with regard to the provision of those services.
- (4) When considering whether to stop the transfer of funds to a municipality in terms of subsection (1)(a) or (b)(i), the National Treasury must take into account all relevant facts, including—
- (a) the municipality's compliance with the requirements of this Act, in particular those relating to—
    - (i) annual financial statements, including the submission to the Auditor-General of its annual financial statements; and
    - (ii) budgets, including the submission of information on the budget and implementation of the budget to the National Treasury and the relevant provincial treasury; and
  - (b) the municipality's co-operation with other municipalities on fiscal and financial matters, in the case of district and local municipalities.

#### **Stopping of equitable share allocations to municipalities**

- 39.** (1) A decision by the National Treasury to stop the transfer to a municipality of funds referred to in section 38(1)(a)—
- (a) lapses after the expiry of 120 days, subject to approval of the decision in terms of paragraph (b) of this subsection and renewal of the decision in terms of subsection (2); and
  - (b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 75 of the Constitution, and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the National Treasury to stop the transfer of the funds.
- (2) Parliament may renew a decision to stop the transfer of funds referred to in section 38(1)(a) for no more than 120 days at a time, following the process established in terms of subsection (1)(b) of this section.
- (3) Before Parliament approves or renews a decision to stop the transfer of funds to a municipality—
- (a) the Auditor-General must report to Parliament, if requested to do so by Parliament; and
  - (b) the municipality must be given an opportunity to answer the allegations against it, and to state its case, before a committee.

**Stopping of other allocations to municipalities**

40. If the transfer of funds to a municipality has been stopped in terms of section 38(1)(b) for the rest of the relevant financial year, the accounting officer of the national or provincial department responsible for the transfer must reflect such stopping of funds, together with reasons, in the annual financial statements of the department. 5

**Monitoring of prices and payments for bulk resources**

41. (1) The National Treasury must monitor—

- (a) the pricing structure of organs of state for the supply of electricity, water or any other bulk resources that may be prescribed, to municipalities and municipal entities for the provision of municipal services; and 10
- (b) payments made by municipalities and municipal entities for such bulk resources.

(2) Each organ of state providing such bulk resources to a municipality must within 15 days after the end of each month furnish the National Treasury with a written statement setting out, for each municipality or for each municipal entity providing municipal services on behalf of such municipalities— 15

- (a) the amount to be paid by the municipality or municipal entity for such bulk resources for that month, and for the financial year up to the end of that month;
- (b) the arrears owing and the age profile of such arrears; and
- (c) any actions taken by that organ of state to recover arrears. 20

**Price increases of bulk resources for provision of municipal services**

42. (1) If a national or provincial organ of state which supplies water, electricity or any other bulk resource as may be prescribed, to a municipality or municipal entity for the provision of a municipal service, intends to increase the price of such resource for the municipality or municipal entity, it must first submit the proposed amendment to its pricing structure— 25

- (a) to its executive authority within the meaning of the Public Finance Management Act; and
- (b) to any regulatory agency for approval, if national legislation requires such approval. 30

(2) The organ of state referred to in subsection (1) must, at least 40 days before making a submission in terms of subsection (1)(a) or (b), request the National Treasury and organised local government to provide written comments on the proposed amendment.

(3) Any submission in terms of subsection (1)(a) or (b) must be accompanied by— 35

- (a) a motivation of the reasons for the proposed amendment;
- (b) an explanation of how the amendment takes account of—
  - (i) the national government's inflation targets and other macroeconomic policy objectives;
  - (ii) steps taken by the organ of state to improve its competitiveness or efficiency in order to reduce costs; 40
  - (iii) any objectives or targets as outlined in any corporate or other governance plan applicable to that organ of state;
- (c) any written comments received from the National Treasury, organised local government or any municipalities; and 45
- (d) an explanation of how such comments have been taken into account.

(4) The executive authority of the organ of state must table the amendment and the documents referred to in subsection (3) in Parliament or the relevant provincial legislature, as may be appropriate.

(5) Unless approved otherwise by the Minister, an amendment to a pricing structure which is tabled in Parliament or the relevant provincial legislature— 50