

- (a) on or before 15 March in any year, does not take effect for the affected municipalities or municipal entities before 1 July in that year; or
- (b) after 15 March in any year, does not take effect for the affected municipalities or municipal entities before 1 July the next year.

Applicability of tax and tariff capping on municipalities

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43. (1) If a national or provincial organ of state in terms of a power contained in any national or provincial legislation determines the upper limits of a municipal tax or tariff, such determination takes effect for municipalities on a date specified in the determination.

(2) Unless the Minister on good grounds approves otherwise, the date specified in a determination referred to in subsection (1) may—

- (a) if the determination was promulgated on or before 15 March in a year, not be a date before 1 July in that year; or
- (b) if the determination was promulgated after 15 March in a year, not be a date before 1 July in the next year.

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(3) If a municipality has in accordance with section 33 or 46(3) entered into a contract which provides for an annual or other periodic escalation of payments to be made by the municipality under the contract, no determination in terms of a power referred to in subsection (1) of the upper limits of a municipal tax or tariff applies to that municipality in so far as such upper limits would impair the municipality's ability to meet the escalation of its payments under the contract.

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Disputes between organs of state

44. (1) Whenever a dispute of a financial nature arises between organs of state, the parties concerned must as promptly as possible take all reasonable steps that may be necessary to resolve the matter out of court.

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(2) If the National Treasury is not a party to the dispute, the parties—

- (a) must report the matter to the National Treasury; and
- (b) may request the National Treasury to mediate between the parties or to designate a person to mediate between them.

(3) If the National Treasury accedes to a request in terms of subsection (2), the National Treasury may determine the mediation process.

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(4) This section only applies if at least one of the organs of state referred to in subsection (1) is a municipality or municipal entity.

CHAPTER 6**DEBT**

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Short-term debt

45. (1) A municipality may incur short-term debt only in accordance with and subject to the provisions of this Act and only when necessary to bridge—

- (a) shortfalls within a financial year during which the debt is incurred, in expectation of specific and realistic anticipated income to be received within that financial year; or
- (b) capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.

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(2) A municipality may incur short-term debt only if—

- (a) a resolution of the municipal council, signed by the mayor, has approved the debt agreement; and
- (b) the accounting officer has signed the agreement or other document which creates or acknowledges the debt.

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(3) For the purpose of subsection (2)(a), a municipal council may—

- (a) approve a short-term debt transaction individually; or

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- (b) approve an agreement with a lender for a short-term credit facility to be accessed as and when required, including a line of credit or bank overdraft facility, provided that—
- (i) the credit limit must be specified in the resolution of the council;
 - (ii) the terms of the agreement, including the credit limit, may be changed only by a resolution of the council; and
 - (iii) if the council approves a credit facility that is limited to emergency use, the accounting officer must notify the council in writing as soon as practical of the amount, duration and cost of any debt incurred in terms of such a credit facility, as well as options for repaying such debt.
- (4) A municipality—
- (a) must pay off short-term debt within the financial year; and
 - (b) may not renew or refinance short-term debt, whether its own debt or that of any other entity, where such renewal or refinancing will have the effect of extending the short-term debt into a new financial year.
- (5) (a) No lender may wilfully extend credit to a municipality for the purpose of renewing or refinancing short-term debt that must be paid off in terms of subsection (4)(a).
- (b) If a lender wilfully extends credit to a municipality in contravention of paragraph (a), the municipality is not bound to repay the loan or interest on the loan.
- (6) Subsection (5)(b) does not apply if the lender—
- (a) relied in good faith on written representations of the municipality as to the purpose of the borrowing; and
 - (b) did not know and had no reason to believe that the borrowing was for the purpose of renewing or refinancing short-term debt.

Long-term debt

46. (1) A municipality may incur long-term debt only in accordance with and subject to any applicable provisions of this Act, including section 19, and only for the purpose of—
- (a) capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution, including costs referred to in subsection (4); or
 - (b) re-financing existing long-term debt subject to subsection (5).
- (2) A municipality may incur long-term debt only if—
- (a) a resolution of the municipal council, signed by the mayor, has approved the debt agreement; and
 - (b) the accounting officer has signed the agreement or other document which creates or acknowledges the debt.
- (3) A municipality may incur long-term debt only if the accounting officer of the municipality—
- (a) has, in accordance with section 21A of the Municipal Systems Act—
 - (i) at least 21 days prior to the meeting of the council at which approval for the debt is to be considered, made public an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided; and
 - (ii) invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the council in respect of the proposed debt; and
 - (b) has submitted a copy of the information statement to the municipal council at least 21 days prior to the meeting of the council, together with particulars of—
 - (i) the essential repayment terms, including the anticipated debt repayment schedule; and
 - (ii) the anticipated total cost in connection with such debt over the repayment period.
- (4) Capital expenditure contemplated in subsection (1)(a) may include—

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- (a) financing costs, including—
- (i) capitalised interest for a reasonable initial period;
 - (ii) costs associated with security arrangements in accordance with section 48;
 - (iii) discounts and fees in connection with the financing; 5
 - (iv) fees for legal, financial, advisory, trustee, credit rating and other services directly connected to the financing; and
 - (v) costs connected to the sale or placement of debt, and costs for printing and publication directly connected to the financing;
- (b) costs of professional services directly related to the capital expenditure; and 10
- (c) such other costs as may be prescribed.
- (5) A municipality may borrow money for the purpose of re-financing existing long-term debt, provided that—
- (a) the existing long-term debt was lawfully incurred;
 - (b) the re-financing does not extend the term of the debt beyond the useful life of the property, plant or equipment for which the money was originally borrowed; 15
 - (c) the net present value of projected future payments (including principal and interest payments) after re-financing is less than the net present value of projected future payments before re-financing; and 20
 - (d) the discount rate used in projecting net present value referred to in paragraph (c), and any assumptions in connection with the calculations, must be reasonable and in accordance with criteria set out in a framework that may be prescribed.
- (6) A municipality's long-term debt must be consistent with its capital budget referred to in section 17(2). 25

Conditions applying to both short-term and long-term debt

47. A municipality may incur debt only if—
- (a) the debt is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency; and 30
 - (b) section 48(3) has been complied with, if security is to be provided by the municipality.

Security

48. (1) A municipality may, by resolution of its council, provide security for—
- (a) any of its debt obligations; 35
 - (b) any debt obligations of a municipal entity under its sole control; or
 - (c) contractual obligations of the municipality undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the municipality or such other person for the purpose of achieving the objects of local government in terms of section 152 of the Constitution. 40
- (2) A municipality may in terms of subsection (1) provide any appropriate security, including by—
- (a) giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral;
 - (b) undertaking to effect payment directly from money or sources that may become available and to authorise the lender or investor direct access to such sources to ensure payment of the secured debt or the performance of the secured obligations, but this form of security may not affect compliance with section 8(2); 45
 - (c) undertaking to deposit funds with the lender, investor or third party as security; 50
 - (d) agreeing to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders or investors, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures; 55

- (e) ceding as security any category of revenue or rights to future revenue;
- (f) undertaking to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms;
- (g) undertaking to retain revenues or specific municipal tariffs or other charges, fees or funds at a particular level or at a level sufficient to meet its financial obligations; 5
- (h) undertaking to make provision in its budgets for the payment of its financial obligations, including capital and interest;
- (i) agreeing to restrictions on debt that the municipality may incur in future until the secured debt is settled or the secured obligations are met; and 10
- (j) agreeing to such other arrangements as the municipality may consider necessary and prudent.
- (3) A council resolution authorising the provision of security in terms of subsection (2)(a)—
- (a) must determine whether the asset or right with respect to which the security is provided, is necessary for providing the minimum level of basic municipal services; and 15
- (b) if so, must indicate the manner in which the availability of the asset or right for the provision of that minimum level of basic municipal services will be protected. 20
- (4) If the resolution has determined that the asset or right is necessary for providing the minimum level of basic municipal services, neither the party to whom the municipal security is provided, nor any successor or assignee of such party, may, in the event of a default by the municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic municipal services. 25
- (5) A determination in terms of subsection (3) that an asset or right is not necessary for providing the minimum level of basic municipal services is binding on the municipality until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

Disclosure 30

49. (1) Any person involved in the borrowing of money by a municipality must, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor—

- (a) disclose all information in that person's possession or within that person's knowledge that may be material to the decision of that prospective lender or investor; and 35
- (b) take reasonable care to ensure the accuracy of any information disclosed.

(2) A lender or investor may rely on written representations of the municipality signed by the accounting officer, if the lender or investor did not know and had no reason to believe that those representations were false or misleading. 40

Municipal guarantees

50. A municipality may not issue any guarantee for any commitment or debt of any organ of state or person, except on the following conditions:

- (a) The guarantee must be within limits specified in the municipality's approved budget; 45
- (b) a municipality may guarantee the debt of a municipal entity under its sole control only if the guarantee is authorised by the council in the same manner and subject to the same conditions applicable to a municipality in terms of this Chapter if it incurs debt;
- (c) a municipality may guarantee the debt of a municipal entity under its shared control or of any other person, but only with the approval of the National Treasury, and then only if— 50

- (i) the municipality creates, and maintains for the duration of the guarantee, a cash-backed reserve equal to its total potential financial exposure as a result of such guarantee; or
- (ii) the municipality purchases and maintains in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer, which covers the full amount of the municipality's potential financial exposure as a result of such guarantee.

National and provincial guarantees

51. Neither the national nor a provincial government may guarantee the debt of a municipality or municipal entity except to the extent that Chapter 8 of the Public Finance Management Act provides for such guarantees.

CHAPTER 7

RESPONSIBILITIES OF MAYORS

General responsibilities

52. The mayor of a municipality—
- (a) must provide general political guidance over the fiscal and financial affairs of the municipality; 15
 - (b) in providing such general political guidance, may monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer, but may not interfere in the exercise of those responsibilities; 20
 - (c) must take all reasonable steps to ensure that the municipality performs its constitutional and statutory functions within the limits of the municipality's approved budget;
 - (d) must, within 30 days of the end of each quarter, submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality; and 25
 - (e) must exercise the other powers and perform the other duties assigned to the mayor in terms of this Act or delegated by the council to the mayor.

Budget processes and related matters

53. (1) The mayor of a municipality must—
- (a) provide general political guidance over the budget process and the priorities that must guide the preparation of a budget;
 - (b) co-ordinate the annual revision of the integrated development plan in terms of section 34 of the Municipal Systems Act and the preparation of the annual budget, and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and 35
 - (c) take all reasonable steps to ensure—
 - (i) that the municipality approves its annual budget before the start of the budget year; 40
 - (ii) that the municipality's service delivery and budget implementation plan is approved by the mayor within 28 days after the approval of the budget; and
 - (iii) that the annual performance agreements as required in terms of section 57(1)(b) of the Municipal Systems Act for the municipal manager and all senior managers— 45
 - (aa) comply with this Act in order to promote sound financial management;
 - (bb) are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan; and 50

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(cc) are concluded in accordance with section 57(2) of the Municipal Systems Act.

(2) The mayor must promptly report to the municipal council and the MEC for finance in the province any delay in the tabling of an annual budget, the approval of the service delivery and budget implementation plan or the signing of the annual performance agreements. 5

(3) The mayor must ensure—

- (a) that the revenue and expenditure projections for each month and the service delivery targets and performance indicators for each quarter, as set out in the service delivery and budget implementation plan, are made public no later than 14 days after the approval of the service delivery and budget implementation plan; and 10
- (b) that the performance agreements of the municipal manager, senior managers and any other categories of officials as may be prescribed, are made public no later than 14 days after the approval of the municipality's service delivery and budget implementation plan. Copies of such performance agreements must be submitted to the council and the MEC for local government in the province. 15

Budgetary control and early identification of financial problems

54. (1) On receipt of a statement or report submitted by the accounting officer of the municipality in terms of section 71 or 72, the mayor must— 20

- (a) consider the statement or report;
- (b) check whether the municipality's approved budget is implemented in accordance with the service delivery and budget implementation plan;
- (c) consider and, if necessary, make any revisions to the service delivery and budget implementation plan, provided that revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the council following approval of an adjustments budget; 25
- (d) issue any appropriate instructions to the accounting officer to ensure—
 - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan; and 30
 - (ii) that spending of funds and revenue collection proceed in accordance with the budget;
- (e) identify any financial problems facing the municipality, including any emerging or impending financial problems; and
- (f) in the case of a section 72 report, submit the report to the council by 31 January of each year. 35

(2) If the municipality faces any serious financial problems, the mayor must—

- (a) promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems, which may include—
 - (i) steps to reduce spending when revenue is anticipated to be less than projected in the municipality's approved budget; 40
 - (ii) the tabling of an adjustments budget; or
 - (iii) steps in terms of Chapter 13; and
- (b) alert the council and the MEC for local government in the province to those problems. 45

(3) The mayor must ensure that any revisions of the service delivery and budget implementation plan are made public promptly.

Report to provincial executive if conditions for provincial intervention exist

55. If a municipality has not approved an annual budget by the first day of the budget year or if the municipality encounters a serious financial problem referred to in section 136, the mayor of the municipality— 50

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- (a) must immediately report the matter to the MEC for local government in the province; and
- (b) may recommend to the MEC an appropriate provincial intervention in terms of section 139 of the Constitution.

Exercise of rights and powers over municipal entities

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56. (1) The mayor of a municipality which has sole or shared control over a municipal entity, must guide the municipality in exercising its rights and powers over the municipal entity in a way—

- (a) that would reasonably ensure that the municipal entity complies with this Act and at all times remains accountable to the municipality; and
- (b) that would not impede the entity from performing its operational responsibilities.

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(2) In guiding the municipality in the exercise of its rights and powers over a municipal entity in accordance with subsection (1), the mayor may monitor the operational functions of the entity, but may not interfere in the performance of those functions.

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Municipalities which do not have mayors

57. (1) The council of a municipality which does not have a mayor, must designate a councillor to exercise the powers and duties assigned by this Act to a mayor.

(2) A reference in this Act to the mayor of a municipality must, in the case of a municipality which does not have a mayor, be construed as a reference to a councillor designated by the council of the municipality in terms of subsection (1).

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Municipalities with executive committees

58. The powers and functions assigned by this Act to a mayor must, in the case of a municipality which has an executive committee referred to in section 43 of the Municipal Structures Act, be exercised by the mayor in consultation with the executive committee.

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Delegations of mayoral powers and duties

59. (1) The powers and duties assigned in terms of this Act to the mayor of a municipality, may—

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- (a) in the case of a municipality which has an executive mayor referred to in section 55 of the Municipal Structures Act, be delegated by the executive mayor in terms of section 60(1) of that Act to another member of the municipality's mayoral committee;
- (b) in the case of a municipality which has an executive committee referred to in section 43 of that Act, be delegated by the council of the municipality to another member of the executive committee; or
- (c) in the case of a municipality which has designated a councillor in terms of section 57(1) of this Act, be delegated by the council to any other councillor.

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

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- (a) must be in writing;
- (b) is subject to any limitations or conditions that the executive mayor or council, as the case may be, may impose; and
- (c) does not divest the mayor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

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(3) The mayor may confirm, vary or revoke any decision taken in consequence of a 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 8**RESPONSIBILITIES OF MUNICIPAL OFFICIALS***Part I: Accounting officers***Municipal managers to be accounting officers**

- 60.** The municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act, and, as accounting officer, must— 5
- (a) exercise the functions and powers assigned to an accounting officer in terms of this Act; and
 - (b) provide guidance and advice on compliance with this Act to— 10
 - (i) the political structures, political office-bearers and officials of the municipality; and
 - (ii) any municipal entity under the sole or shared control of the municipality.

Fiduciary responsibilities of accounting officers

- 61.** (1) The accounting officer of a municipality must—
- (a) act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs; 15
 - (b) disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and 20
 - (c) seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the municipality.
- (2) An accounting officer may not—
- (a) act in a way that is inconsistent with the duties assigned to accounting officers of municipalities in terms of this Act; or 25
 - (b) use the position or privileges of, or confidential information obtained as, accounting officer for personal gain or to improperly benefit another person.

*Financial management***General financial management functions**

- 62.** (1) The accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure— 30
- (a) that the resources of the municipality are used effectively, efficiently and economically;
 - (b) that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards; 35
 - (c) that the municipality has and maintains effective, efficient and transparent systems—
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit operating in accordance with any prescribed norms and standards; 40
 - (d) that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented;
 - (e) that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15; and 45
 - (f) that the municipality has and implements—
 - (i) a tariff policy referred to in section 74 of the Municipal Systems Act;
 - (ii) a rates policy as may be required in terms of any applicable national legislation; 50

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(iii) a credit control and debt collection policy referred to in section 96(b) of the Municipal Systems Act; and

(iv) a supply chain management policy in accordance with Chapter 11.

(2) The accounting officer is responsible for and must account for all bank accounts of the municipality, including any bank account opened for— 5

(a) any relief, charitable, trust or other fund set up by the municipality in terms of section 12; or

(b) a purpose referred to in section 48(2)(d).

Asset and liability management

63. (1) The accounting officer of a municipality is responsible for the management of— 10

(a) the assets of the municipality, including the safeguarding and the maintenance of those assets; and

(b) the liabilities of the municipality.

(2) The accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure— 15

(a) that the municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the municipality;

(b) that the municipality's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and 20

(c) that the municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management

64. (1) The accounting officer of a municipality is responsible for the management of the revenue of the municipality. 25

(2) The accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure—

(a) that the municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the municipality's credit control and debt collection policy; 30

(b) that revenue due to the municipality is calculated on a monthly basis;

(c) that accounts for municipal tax and charges for municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical; 35

(d) that all money received is promptly deposited in accordance with this Act into the municipality's primary and other bank accounts;

(e) that the municipality has and maintains a management, accounting and information system which—

(i) recognises revenue when it is earned; 40

(ii) accounts for debtors; and

(iii) accounts for receipts of revenue;

(f) that the municipality has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed;

(g) that the municipality charges interest on arrears, except where the council has granted exemptions in accordance with its budget-related policies and within a prescribed framework; and 45

(h) that all revenue received by the municipality, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

(3) The accounting officer must immediately inform the National Treasury of any payments due by an organ of state to the municipality in respect of municipal tax or for municipal services, if such payments are regularly in arrears for periods of more than 30 days. 50

(4) The accounting officer must take all reasonable steps to ensure—

(a) that any funds collected by the municipality on behalf of another organ of state is transferred to that organ of state at least on a weekly basis; and 55

(b) that such funds are not used for purposes of the municipality.

Expenditure management

65. (1) The accounting officer of a municipality is responsible for the management of the expenditure of the municipality.

(2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure—

- (a) that the municipality has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;
- (b) that the municipality has and maintains a management, accounting and information system which—
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the municipality; and
 - (iii) accounts for payments made by the municipality;
- (c) that the municipality has and maintains a system of internal control in respect of creditors and payments;
- (d) that payments by the municipality are made—
 - (i) directly to the person to whom it is due unless agreed otherwise for reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit;
- (e) that all money owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;
- (f) that the municipality complies with its tax, levy, duty, pension, medical aid, audit fees and other statutory commitments;
- (g) that any dispute concerning payments due by the municipality to another organ of state is disposed of in terms of legislation regulating disputes between organs of state;
- (h) that the municipality's available working capital is managed effectively and economically in terms of the prescribed cash management and investment framework;
- (i) that the municipality's supply chain management policy referred to in section 111 is implemented in a way that is fair, equitable, transparent, competitive and cost-effective; and
- (j) that all financial accounts of the municipality are closed at the end of each month and reconciled with its records.

Expenditure on staff benefits

66. The accounting officer of a municipality must, in a format and for periods as may be prescribed, report to the council on all expenditure incurred by the municipality on staff salaries, wages, allowances and benefits, and in a manner that discloses such expenditure per type of expenditure, namely—

- (a) salaries and wages;
- (b) contributions for pensions and medical aid;
- (c) travel, motor car, accommodation, subsistence and other allowances;
- (d) housing benefits and allowances;
- (e) overtime payments;
- (f) loans and advances; and
- (g) any other type of benefit or allowance related to staff.

Funds transferred to organisations and bodies outside government

- 67.** (1) Before transferring funds of the municipality to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction, the accounting officer must be satisfied that the organisation or body—
- (a) has the capacity and has agreed—
 - (i) to comply with any agreement with the municipality;
 - (ii) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in the agreement;
 - (iii) to report at least monthly to the accounting officer on actual expenditure against such transfer; and
 - (iv) to submit its audited financial statements for its financial year to the accounting officer promptly;
 - (b) implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement; and
 - (c) has in respect of previous similar transfers complied with all the requirements of this section.
- (2) If there has been a failure by an organisation or body to comply with the requirements of subsection (1) in respect of a previous transfer, the municipality may despite subsection (1)(c) make a further transfer to that organisation or body provided that—
- (a) subsection (1)(a) and (b) is complied with; and
 - (b) the relevant provincial treasury has approved the transfer.
- (3) The accounting officer must through contractual and other appropriate mechanisms enforce compliance with subsection (1).
- (4) Subsection (1)(a) does not apply to an organisation or body serving the poor or used by government as an agency to serve the poor, provided—
- (a) that the transfer does not exceed a prescribed limit; and
 - (b) that the accounting officer—
 - (i) takes all reasonable steps to ensure that the targeted beneficiaries receive the benefit of the transferred funds; and
 - (ii) certifies to the Auditor-General that compliance by that organisation or body with subsection (1)(a) is uneconomical or unreasonable.

Budget preparation

- 68.** The accounting officer of a municipality must—
- (a) assist the mayor in performing the budgetary functions assigned to the mayor in terms of Chapters 4 and 7; and
 - (b) provide the mayor with the administrative support, resources and information necessary for the performance of those functions.

Budget implementation

- 69.** (1) The accounting officer of a municipality is responsible for implementing the municipality's approved budget, including taking all reasonable steps to ensure—
- (a) that the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the service delivery and budget implementation plan; and
 - (b) that revenue and expenditure are properly monitored.
- (2) When necessary, the accounting officer must prepare an adjustments budget and submit it to the mayor for consideration and tabling in the municipal council.
- (3) The accounting officer must no later than 14 days after the approval of an annual budget submit to the mayor—
- (a) a draft service delivery and budget implementation plan for the budget year; and

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- (b) drafts of the annual performance agreements as required in terms of section 57(1)(b) of the Municipal Systems Act for the municipal manager and all senior managers.

Impending shortfalls, overspending and overdrafts

70. (1) The accounting officer of a municipality must report in writing to the municipal council— 5

- (a) any impending—
 (i) shortfalls in budgeted revenue; and
 (ii) overspending of the municipality's budget; and
 (b) any steps taken to prevent or rectify such shortfalls or overspending. 10

(2) If a municipality's bank account, or if the municipality has more than one bank account, the consolidated balance in those bank accounts, shows a net overdrawn position for a period exceeding a prescribed period, the accounting officer of the municipality must promptly notify the National Treasury in the prescribed format of—

- (a) the amount by which the account or accounts are overdrawn; 15
 (b) the reasons for the overdrawn account or accounts; and
 (c) the steps taken or to be taken to correct the matter.

(3) When determining the net overdrawn position for purposes of subsection (2), the accounting officer must exclude any amounts reserved or pledged for any specific purpose or encumbered in any other way. 20

Reports and reportable matters**Monthly budget statements**

71. (1) The accounting officer of a municipality must by no later than 10 working days after the end of each month submit to the mayor of the municipality and the relevant provincial treasury a statement in the prescribed format on the state of the municipality's budget reflecting the following particulars for that month and for the financial year up to the end of that month: 25

- (a) Actual revenue, per revenue source;
 (b) actual borrowings;
 (c) actual expenditure, per vote; 30
 (d) actual capital expenditure, per vote;
 (e) the amount of any allocations received;
 (f) actual expenditure on those allocations, excluding expenditure on—
 (i) its share of the local government equitable share; and
 (ii) allocations exempted by the annual Division of Revenue Act from compliance with this paragraph; and 35
 (g) when necessary, an explanation of—
 (i) any material variances from the municipality's projected revenue by source, and from the municipality's expenditure projections per vote;
 (ii) any material variances from the service delivery and budget implementation plan; and
 (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the municipality's approved budget. 40

(2) The statement must include— 45

- (a) a projection of the relevant municipality's revenue and expenditure for the rest of the financial year, and any revisions from initial projections; and
 (b) the prescribed information relating to the state of the budget of each municipal entity as provided to the municipality in terms of section 87(10).

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(3) The amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for in the municipality's approved budget.

(4) The statement to the provincial treasury must be in the format of a signed document and in electronic format.

(5) The accounting officer of a municipality which has received an allocation referred to in subsection (1)(e) during any particular month must, by no later than 10 working days after the end of that month, submit that part of the statement reflecting the particulars referred to in subsection (1)(e) and (f) to the national or provincial organ of state or municipality which transferred the allocation. 5

(6) The provincial treasury must by no later than 22 working days after the end of each month submit to the National Treasury a consolidated statement in the prescribed format on the state of the municipalities' budgets, per municipality and per municipal entity. 10

(7) The provincial treasury must, within 30 days after the end of each quarter, make public as may be prescribed, a consolidated statement in the prescribed format on the state of municipalities' budgets per municipality and per municipal entity. The MEC for finance must submit such consolidated statement to the provincial legislature no later than 45 days after the end of each quarter. 15

Mid-year budget and performance assessment

72. (1) The accounting officer of a municipality must by 25 January of each year—

(a) assess the performance of the municipality during the first half of the financial year, taking into account— 20

(i) the monthly statements referred to in section 71 for the first half of the financial year;

(ii) the municipality's service delivery performance during the first half of the financial year, and the service delivery targets and performance indicators set in the service delivery and budget implementation plan; 25

(iii) the past year's annual report, and progress on resolving problems identified in the annual report; and

(iv) the performance of every municipal entity under the sole or shared control of the municipality, taking into account reports in terms of section 88 from any such entities; and 30

(b) submit a report on such assessment to—

(i) the mayor of the municipality;

(ii) the National Treasury; and

(iii) the relevant provincial treasury. 35

(2) The statement referred to in section 71(1) for the sixth month of a financial year may be incorporated into the report referred to in subsection (1)(b) of this section.

(3) The accounting officer must, as part of the review—

(a) make recommendations as to whether an adjustments budget is necessary; and

(b) recommend revised projections for revenue and expenditure to the extent that this may be necessary. 40

Reports on failure to adopt or implement budget-related and other policies

73. The accounting officer must inform the provincial treasury, in writing, of—

(a) any failure by the council of the municipality to adopt or implement a budget-related policy or a supply chain management policy referred to in section 111; or 45

(b) any non-compliance by a political structure or office-bearer of the municipality with any such policy.

General reporting obligation

74. (1) The accounting officer of a municipality must submit to the National Treasury, the provincial treasury, the department for local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required. 5

(2) If the accounting officer of a municipality is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the mayor and the provincial treasury.

Information to be placed on websites of municipalities

75. (1) The accounting officer of a municipality must place on the website referred to in section 21A of the Municipal Systems Act the following documents of the municipality: 10

- (a) The annual and adjustments budgets and all budget-related documents;
- (b) all budget-related policies;
- (c) the annual report; 15
- (d) all performance agreements required in terms of section 57(1)(b) of the Municipal Systems Act;
- (e) all service delivery agreements;
- (f) all long-term borrowing contracts;
- (g) all supply chain management contracts above a prescribed value; 20
- (h) an information statement containing a list of assets over a prescribed value that have been disposed of in terms of section 14(2) or (4) during the previous quarter;
- (i) contracts to which subsection (1) of section 33 apply, subject to subsection (3) of that section; 25
- (j) public-private partnership agreements referred to in section 120;
- (k) all quarterly reports tabled in the council in terms of section 52(d); and
- (l) any other documents that must be placed on the website in terms of this Act or any other applicable legislation, or as may be prescribed.

(2) A document referred to in subsection (1) must be placed on the website not later than five days after its tabling in the council or on the date on which it must be made public, whichever occurs first. 30

Protection of accounting officer

76. Any action taken by a political structure or office-bearer of a municipality against the accounting officer of the municipality solely because of that accounting officer's compliance with a provision of this Act, is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995). 35

Part 2: Financial administration**Top management of municipalities**

77. (1) The top management of a municipality's administration consists of— 40
- (a) the accounting officer;
 - (b) the chief financial officer;
 - (c) all senior managers who are responsible for managing the respective votes of the municipality and to whom powers and duties for this purpose have been delegated in terms of section 79; and 45
 - (d) any other senior officials designated by the accounting officer.

(2) The top management must assist the accounting officer in managing and co-ordinating the financial administration of the municipality.

Senior managers and other officials of municipalities

78. (1) Each senior manager of a municipality and each official of a municipality exercising financial management responsibilities must take all reasonable steps within their respective areas of responsibility to ensure—

- (a) that the system of financial management and internal control established for the municipality is carried out diligently; 5
- (b) that the financial and other resources of the municipality are utilised effectively, efficiently, economically and transparently;
- (c) that any unauthorised, irregular or fruitless and wasteful expenditure and any other losses are prevented; 10
- (d) that all revenue due to the municipality is collected;
- (e) that the assets and liabilities of the municipality are managed effectively and that assets are safeguarded and maintained to the extent necessary;
- (f) that all information required by the accounting officer for compliance with the provisions of this Act is timely submitted to the accounting officer; and 15
- (g) that the provisions of this Act, to the extent applicable to that senior manager or official, including any delegations in terms of section 79, are complied with.

(2) A senior manager or such official must perform the functions referred to in subsection (1) subject to the directions of the accounting officer of the municipality.

Delegations

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

- (a) must, for the proper application of this Act in the municipality's administration, develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration; 25
- (b) may, in accordance with that system, delegate to a member of the municipality's top management referred to in section 77 or any other official of the municipality—
 - (i) any of the powers or duties assigned to an accounting officer in terms of this Act; or 30
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act; and
- (c) must regularly review delegations issued in terms of paragraph (b) and, if necessary, amend or withdraw any of those delegations. 35

(2) The accounting officer may not delegate to any political structure or political office-bearer of the municipality any of the powers or duties assigned to accounting officers in terms of this Act.

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

- (a) must be in writing; 40
- (b) is subject to such limitations and conditions as the accounting officer may impose in a specific case;
- (c) may either be to a specific individual or to the holder of a specific post in the municipality; 45
- (d) may, in the case of a delegation to a member of the municipality's top management in terms of subsection (1)(b), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and
- (e) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty. 50

(4) The accounting officer 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 9

MUNICIPAL BUDGET AND TREASURY OFFICES

Establishment

5

80. (1) Every municipality must have a budget and treasury office.

(2) A budget and treasury office consists of—

- (a) a chief financial officer designated by the accounting officer of the municipality;
- (b) officials of the municipality allocated by the accounting officer to the chief financial officer; and
- (c) any other persons contracted by the municipality for the work of the office.

Role of chief financial officer

81. (1) The chief financial officer of a municipality—

- (a) is administratively in charge of the budget and treasury office; 15
 - (b) must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act;
 - (c) must assist the accounting officer in the administration of the municipality's bank accounts and in the preparation and implementation of the municipality's budget; 20
 - (d) must advise senior managers and other senior officials in the exercise of powers and duties assigned to them in terms of section 78 or delegated to them in terms of section 79; and
 - (e) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 79 be delegated by the accounting officer to the chief financial officer. 25
- (2) The chief financial officer of a municipality is accountable to the accounting officer for the performance of the duties referred to in subsection (1).

Delegations

30

82. (1) The chief financial officer of a municipality may sub-delegate any of the duties referred to in section 81(1)(b), (d) and (e)—

- (a) to an official in the budget and treasury office;
 - (b) to the holder of a specific post in that office; or
 - (c) with the concurrence of the accounting officer, to— 35
 - (i) any other official of the municipality; or
 - (ii) any person contracted by the municipality for the work of the office.
- (2) If the chief financial officer sub-delegates any duties in terms of subsection (1) to a person who is not an employee of the municipality, the chief financial officer must be satisfied that effective systems and procedures are in place to ensure control and accountability. 40
- (3) A sub-delegation in terms of subsection (1)—
- (a) must be in writing;
 - (b) is subject to such limitations or conditions as the chief financial officer may impose; and
 - (c) does not divest the chief financial officer of the responsibility concerning the delegated duty. 45
- (4) The chief financial officer may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), but no such variation or

revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Competency levels of professional financial officials

83. (1) The accounting officer, senior managers, the chief financial officer and other financial officials of a municipality must meet the prescribed financial management competency levels. 5

(2) A municipality must for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels.

(3) The National Treasury or a provincial treasury may assist municipalities in the training of officials referred to in subsection (1). 10

CHAPTER 10

MUNICIPAL ENTITIES

Part 1: Establishment

Financial implications for municipalities 15

84. (1) When considering the establishment of, or participation in, a municipal entity, a municipality must first—

- (a) determine precisely the function or service that such entity would perform on behalf of the municipality; and
- (b) make an assessment of the impact of the shifting of that function or service to the entity on the municipality's staff, assets and liabilities, including an assessment of—
 - (i) the number of staff of the municipality to be transferred to the entity;
 - (ii) the number of staff of the municipality that would become redundant because of the shifting of that function or service; 25
 - (iii) the cost to the municipality of any staff retrenchments or the retention of redundant staff;
 - (iv) any assets of the municipality to be transferred to the entity;
 - (v) any assets of the municipality that would become obsolete because of the shifting of that function or service; 30
 - (vi) any liabilities of the municipality to be ceded to the entity; and
 - (vii) any debt of the municipality attributed to that function or service which the municipality would retain.

(2) A municipality may establish or participate in a municipal entity only if—

- (a) the municipal manager, at least 90 days before the meeting of the municipal council at which the proposed establishment of the entity, or the municipality's proposed participation in the entity, is to be approved— 35
 - (i) has, in accordance with section 21A of the Municipal Systems Act—
 - (aa) made public an information statement setting out the municipality's plans for the municipal entity together with the assessment which the municipality must conduct in terms of subsection (1); and 40
 - (bb) invited the local community, organised labour and other interested persons to submit to the municipality comments or representations in respect of the matter; and 45
 - (ii) has solicited the views and recommendations of—
 - (aa) the National Treasury and the relevant provincial treasury;
 - (bb) the national and provincial departments responsible for local government; and
 - (cc) the MEC for local government in the province; and 50
- (b) the municipal council has taken into account—
 - (i) the assessment referred to in subsection (1);

- (ii) any comments or representations on the matter received from the local community, organised labour and other interested persons;
- (iii) any written views and recommendations on the matter received from the National Treasury, the relevant provincial treasury, the national department responsible for local government or the MEC for local government in the province. 5

(3) For the purposes of this section, "establish" includes the acquisition of an interest in a private company that would render that private company a municipal entity.

Part 2: Financial governance

Bank accounts

10

85. (1) A municipal entity must open and maintain at least one bank account in the name of the entity.

(2) All money received by a municipal entity must be paid into its bank account or accounts, and this must be done promptly and in accordance with any requirements that may be prescribed. 15

(3) A municipal entity 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);
- (c) otherwise than in the name of the entity; and 20
- (d) without the approval of its board of directors.

(4) Money may be withdrawn from a municipal entity's bank account only in accordance with requirements that may be prescribed.

(5) The accounting officer of a municipal entity—

- (a) must administer all the entity's bank accounts; 25
- (b) is accountable to the board of directors of the entity for the entity's bank accounts; and
- (c) must enforce any requirements that may be prescribed in terms of subsection (4).

Bank account details

30

86. (1) The accounting officer of a municipal entity must submit to the entity's parent municipality, in writing—

- (a) within 90 days after the entity 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 35
- (b) annually before the start of a financial year, the name of each bank where the entity holds a bank account, and the type and number of each account.

(2) The accounting officer of the municipal entity's parent municipality, or if there are more than one parent municipality, any one of the accounting officers of those municipalities as may be agreed between them, must upon receipt of the information referred to in subsection (1), submit that information to the Auditor-General, the National Treasury and the relevant provincial treasury, in writing. 40

Budgets

87. (1) The board of directors of a municipal entity must for each financial year submit a proposed budget for the entity to its parent municipality not later than 150 days before the start of the entity's financial year or earlier if requested by the parent municipality. 45

(2) The parent municipality must consider the proposed budget of the entity and assess the entity's priorities and objectives. If the parent municipality makes any recommendations on the proposed budget, the board of directors of the entity must

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consider those recommendations and, if necessary, submit a revised budget to the parent municipality not later than 100 days before the start of the financial year.

(3) The mayor of the parent municipality must table the proposed budget of the municipal entity in the council when the annual budget of the municipality for the relevant year is tabled. 5

(4) The board of directors of a municipal entity must approve the budget of the municipal entity not later than 30 days before the start of the financial year, taking into account any hearings or recommendations of the council of the parent municipality.

(5) The budget of a municipal entity must—

- (a) be balanced; 10
- (b) be consistent with any service delivery agreement or other agreement between the entity and the entity's parent municipality;
- (c) be within any limits determined by the entity's parent municipality, including any limits on tariffs, revenue, expenditure and borrowing;
- (d) include a multi-year business plan for the entity that— 15
 - (i) sets key financial and non-financial performance objectives and measurement criteria as agreed with the parent municipality;
 - (ii) is consistent with the budget and integrated development plan of the entity's parent municipality;
 - (iii) is consistent with any service delivery agreement or other agreement between the entity and the entity's parent municipality; and 20
 - (iv) reflects actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates; and
- (e) otherwise comply with the requirements of section 17(1) and (2) to the extent that such requirements can reasonably be applied to the entity. 25

(6) The board of directors of a municipal entity may, with the approval of the mayor, revise the budget of the municipal entity, but only for the following reasons:

- (a) To adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year; 30
- (b) to authorise expenditure of any additional allocations to the municipal entity from its parent municipality;
- (c) to authorise, within a prescribed framework, any unforeseeable and unavoidable expenditure approved by the mayor of the parent municipality;
- (d) to authorise any other expenditure within a prescribed framework. 35

(7) Any projected allocation to a municipal entity from its parent municipality must be provided for in the annual budget of the parent municipality, and to the extent not so provided, the entity's budget must be adjusted.

(8) A municipal entity may incur expenditure only in accordance with its approved budget or an adjustments budget. 40

(9) The mayor must table the budget or adjusted budget and any adjustments budget of a municipal entity as approved by its board of directors, at the next council meeting of the municipality.

(10) A municipal entity's approved budget or adjusted budget must be made public in substantially the same way as the budget of a municipality must be made public. 45

(11) The accounting officer of a municipal entity must by no later than seven working days after the end of each month submit to the accounting officer of the parent municipality a statement in the prescribed format on the state of the entity's budget reflecting the following particulars for that month and for the financial year up to the end of that month: 50

- (a) Actual revenue, per revenue source;
- (b) actual borrowings;
- (c) actual expenditure;
- (d) actual capital expenditure;
- (e) the amount of any allocations received; 55

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- (f) actual expenditure on those allocations, excluding expenditure on allocations exempted by the annual Division of Revenue Act from compliance with this paragraph; and
- (g) when necessary, an explanation of—
- (i) any material variances from the entity's projected revenue by source, and from the entity's expenditure projections; 5
 - (ii) any material variances from the service delivery agreement and the business plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the entity's approved budget. 10
- (12) The statement must include a projection of revenue and expenditure for the rest of the financial year, and any revisions from initial projections.
- (13) The amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for in the entity's approved budget. 15
- (14) The statement to the accounting officer of the municipality must be in the format of a signed document and in electronic format.

Mid-year budget and performance assessment

88. (1) The accounting officer of a municipal entity must by 20 January of each year—
- (a) assess the performance of the entity during the first half of the financial year, taking into account— 20
 - (i) the monthly statements referred to in section 87 for the first half of the financial year and the targets set in the service delivery, business plan or other agreement with the entity's parent municipality; and
 - (ii) the entity's annual report for the past year, and progress on resolving problems identified in the annual report; and 25
 - (b) submit a report on such assessment to—
 - (i) the board of directors of the entity; and
 - (ii) the parent municipality of the entity.
- (2) A report referred to in subsection (1) must be made public. 30

Remuneration packages

89. The parent municipality of a municipal entity must—
- (a) determine the upper limits of the salary, allowances and other benefits of the chief executive officer and senior managers of the entity; and
 - (b) monitor and ensure that the municipal entity reports to the council on all expenditure incurred by that municipal entity on directors and staff remuneration matters, and in a manner that discloses such expenditure per type of expenditure namely: 35
 - (i) Salaries and wages;
 - (ii) contributions for pensions and medical aid; 40
 - (iii) travel, motor car, accommodation, subsistence and other allowances;
 - (iv) housing benefits and allowances;
 - (v) overtime payments;
 - (vi) loans and advances; and
 - (vii) any other type of benefit or allowance related to directors and staff. 45

Disposal of capital assets

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

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- (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 or municipal entity after that asset has been sold, transferred or otherwise disposed of. 5
- (4) A municipal council may delegate to the accounting officer of a municipal entity its power to make the determinations referred to in subsection (2)(a) and (b) in respect of movable capital assets of the entity 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 and competitive and consistent with the supply chain management policy which the municipal entity must have and maintain in terms of section 111. 15
- (6) This section does not apply to the transfer of a capital asset to a municipality or another 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.

Financial year 20

91. The financial year of a municipal entity must be the same as that of municipalities.

Audit

92. The Auditor-General must audit and report on the accounts, financial statements and financial management of each municipal entity.

Part 3: Accounting officers 25**Chief executive officer to be accounting officer**

93. The chief executive officer of a municipal entity appointed in terms of section 93J of the Municipal Systems Act is the accounting officer of the entity.

Fiduciary duties of accounting officers

94. (1) The accounting officer of a municipal entity must— 30
- (a) exercise utmost care to ensure reasonable protection of the assets and records of the entity;
- (b) act with fidelity, honesty, integrity and in the best interest of the entity in managing the financial affairs of the entity;
- (c) disclose to the entity's parent municipality and the entity's board of directors all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the parent municipality or the board of directors; and 35
- (d) seek, within the sphere of influence of that accounting officer, to prevent any prejudice to the financial interests of the parent municipality or the municipal entity. 40
- (2) The accounting officer may not—
- (a) act in a way that is inconsistent with the responsibilities assigned to accounting officers of municipal entities in terms of this Act; or
- (b) use the position or privileges of, or confidential information obtained as accounting officer, for personal gain or to improperly benefit another person. 45

General financial management functions of accounting officers

95. The accounting officer of a municipal entity is responsible for managing the financial administration of the entity, and must for this purpose take all reasonable steps to ensure—

- (a) that the resources of the entity are used effectively, efficiently, economically and transparently; 5
- (b) that full and proper records of the financial affairs of the entity are kept;
- (c) that the entity has and maintains effective, efficient and transparent systems—
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit complying with and operating in accordance with any prescribed norms and standards; 10
- (d) that irregular, and fruitless and wasteful expenditure and other losses are prevented;
- (e) that expenditure is in accordance with the operational policies of the entity; and 15
- (f) that disciplinary or, when appropriate, criminal proceedings, are instituted against any official of the entity who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15.

Asset and liability management

96. (1) The accounting officer of a municipal entity is responsible for the management of— 20

- (a) the assets of the entity, including the safeguarding and maintenance of those assets; and
- (b) the liabilities of the entity.

(2) The accounting officer must, for the purposes of subsection (1), take all reasonable steps to ensure that the entity has and maintains— 25

- (a) a management, accounting and information system that accounts for proper assets and liabilities of the management systems of the municipal entity; and
- (b) a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed. 30

Revenue management

97. The accounting officer of a municipal entity must take all reasonable steps to ensure—

- (a) that the entity has and implements effective revenue collection systems to give effect to its budget; 35
- (b) that all revenue due to the entity is collected;
- (c) that any funds collected by the entity on behalf of a municipality—
 - (i) are transferred to that municipality strictly in accordance with the agreement between the entity the municipality; and
 - (ii) are not used for the purposes of the entity; 40
- (d) that the municipal entity has effective revenue collection systems consistent with those of the parent municipality;
- (e) that revenue due to the entity is calculated on a monthly basis;
- (f) that accounts for service charges are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical; 45
- (g) that all money received is promptly deposited in accordance with this Act into the municipal entity's bank accounts;
- (h) that the municipal entity has and maintains a management, accounting and information system which—
 - (i) recognises revenue when it is earned; 50
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (i) that the municipal entity has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed; and

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(j) that all revenue received by the municipal entity, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

(3) The accounting officer must immediately inform the parent municipality of any payments due by an organ of state to the entity in respect of service charges, if such payments are regularly in arrears for periods of more than 30 days. 5

Monthly reconciliation of revenue and accounts

98. The accounting officer of a municipal entity must take all reasonable steps to ensure that—

- (a) all revenue received by the entity, including revenue received by any collecting agency on its behalf, is reconciled on a monthly or more regular basis; and 10
- (b) all accounts of the entity are reconciled each month.

Expenditure management

99. (1) The accounting officer of a municipal entity is responsible for the management of the expenditure of the entity. 15

(2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure—

- (a) that the entity has and maintains an effective system of expenditure control including procedures for the approval, authorisation, withdrawal and payment of funds; 20
- (b) that all money owing by the entity is paid within 30 days of receiving the relevant invoice or statement unless prescribed otherwise for certain categories of expenditure;
- (c) that the entity has and maintains a management, accounting and information system which— 25
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the entity; and
 - (iii) accounts for payments made by the entity;
- (d) that the entity has and maintains a system of internal control in respect of creditors and payments; 30
- (e) that payments by the entity are made—
 - (i) directly to the person to whom it is due unless agreed otherwise only for reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit; 35
- (f) that the entity complies with its tax, duty, pension, medical aid, audit fees and other statutory commitments;
- (g) that the entity's available working capital is managed effectively and economically in terms of any prescribed cash management and investment framework; and 40
- (h) that the entity has and implements a supply chain management policy in accordance with section 111 in a way that is fair, equitable, transparent and cost-effective.

Budget implementation 45

100. The accounting officer of a municipal entity is responsible for implementing the entity's budget, including taking effective and appropriate steps to ensure that—

- (a) the spending of funds is in accordance with the budget;
- (b) revenue and expenditure are properly monitored; and
- (c) spending is reduced as necessary when revenue is anticipated to be less than projected in the budget. 50

Part 4: Reports and reportable matters**Impending under collection, shortfalls, overspending, overdrafts, and non-payment**

101. (1) The accounting officer of a municipal entity must report, in writing, to the board of directors of the entity, at its next meeting, and to the accounting officer of the entity's parent municipality any financial problems of the entity, including— 5

- (a) any impending or actual—
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue;
 - (iii) overspending of the entity's budget; 10
 - (iv) delay in the entity's payments to any creditors; or
 - (v) overdraft in any bank account of the entity for a period exceeding 21 days; and
- (b) any steps taken to rectify such financial problems.

(2) The accounting officer of the municipality must table a report referred to in subsection (1) in the municipal council at its next meeting. 15

Irregular or fruitless and wasteful expenditure

102. (1) On discovery of any irregular expenditure or any fruitless and wasteful expenditure, the board of directors of a municipal entity must promptly report, in writing, to the mayor and municipal manager of the entity's parent municipality and the Auditor-General— 20

- (a) particulars of the expenditure; and
- (b) any steps that have been taken—
 - (i) to recover the expenditure; and
 - (ii) to prevent a recurrence of the expenditure. 25

(2) The board of directors of a municipal entity must promptly report to the South African Police Service any-

- (a) irregular expenditure that may constitute a criminal offence; and
- (b) other losses suffered by the municipal entity which resulted from suspected criminal conduct. 30

Reporting of improper interference by councillors

103. The accounting officer of a municipal entity must promptly report to the speaker of the council of the entity's parent municipality any interference by a councillor outside that councillor's assigned duties, in—

- (a) the financial affairs of the municipal entity; or 35
- (b) the responsibilities of the board of directors of the municipal entity.

General reporting obligations

104. (1) The accounting officer of a municipal entity—

- (a) is, except where otherwise provided in this Act, responsible for the submission by the entity of all reports, returns, notices and other information to the entity's parent municipality, as may be required by this Act; and 40
- (b) must submit to the accounting officer of the entity's parent municipality, the National Treasury, the relevant provincial treasury, the department of local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required. 45

(2) If the accounting officer of a municipal entity is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the council of the entity's parent municipality.

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MUNICIPAL FINANCE MANAGEMENT ACT, 2003**Part 5: Other officials of municipal entities****Duties of other officials**

- 105.** (1) Each official of a municipal entity exercising financial management responsibilities must take all reasonable steps within that official's area of responsibility to ensure— 5
- (a) that the system of financial management and internal control established for the entity is carried out diligently;
 - (b) that the financial and other resources of the entity are utilised effectively, efficiently, economically and transparently;
 - (c) that any irregular expenditure, fruitless and wasteful expenditure and other losses are prevented; 10
 - (d) that all revenue due to the entity is collected;
 - (e) that the provisions of this Act to the extent applicable to that official, including any delegations in terms of section 106, are complied with; and
 - (f) that the assets and liabilities of the entity are managed effectively, and that assets are safeguarded and maintained to the extent necessary. 15
- (2) An official of a municipal entity must perform the functions referred to in subsection (1) subject to the directions of the accounting officer of the entity.

Delegation of powers and duties by accounting officers

- 106.** (1) The accounting officer of a municipal entity— 20
- (a) may delegate to an official of that entity—
 - (i) any of the powers or duties assigned or delegated to the accounting officer in terms of this Act; or
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act; and 25
 - (b) must regularly review delegations issued in terms of paragraph (a) and, if necessary, amend or withdraw any of those delegations.
- (2) A delegation in terms of subsection (1)— 30
- (a) must be in writing;
 - (b) is subject to any limitations and conditions the accounting officer may impose;
 - (c) may be either to a specific individual or to the holder of a specific post in the municipal entity; and
 - (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty. 35
- (3) An accounting officer may confirm, vary or revoke any decision taken by an official in consequence of a delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision. 40

Competency levels of professional financial officials

107. The accounting officer, senior managers, any chief financial officer and all other financial officials of a municipal entity must meet the prescribed financial management competency levels.

Part 6: General 45**Borrowing of money**

- 108.** (1) A municipal entity may borrow money, but only in accordance with—
- (a) the entity's multi-year business plan referred to in section 87(5)(d); and
 - (b) the provisions of Chapter 6 to the extent that those provisions can be applied to a municipal entity. 50

(2) In applying Chapter 6 to a municipal entity, a reference in that Chapter to a municipality, a municipal council or an accounting officer must be read as referring to a municipal entity, the board of directors of a municipal entity or the accounting officer of a municipal entity, respectively.

Financial problems in municipal entities

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109. If a municipal entity experiences serious or persistent financial problems and the board of directors of the entity fails to act effectively, the parent municipality must either—

- (a) take appropriate steps in terms of its rights and powers over that entity, including its rights and powers in terms of any relevant service delivery or other agreement; 10
- (b) impose a financial recovery plan, which must meet the same criteria set out in section 142 for a municipal financial recovery plan; or
- (c) liquidate and disestablish the entity.

CHAPTER 11

15

GOODS AND SERVICES

Part 1: Supply chain management

Application of this Part

110. (1) This Part, subject to subsection (2), applies to—

- (a) the procurement by a municipality or municipal entity of goods and services; 20
- (b) the disposal by a municipality or municipal entity of goods no longer needed;
- (c) the selection of contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; and
- (d) the selection of external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act. 25

(2) This Part, except where specifically provided otherwise, does not apply if a municipality or municipal entity contracts with another organ of state for—

- (a) the provision of goods or services to the municipality or municipal entity; 30
- (b) the provision of a municipal service or assistance in the provision of a municipal service; or
- (c) the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement. 35

(3) The disposal of goods by a municipality or municipal entity in terms of this Part must be read with sections 14 and 90.

Supply chain management policy

111. Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part. 40

Supply chain management policy to comply with prescribed framework

112. (1) The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover at least the following: 45

- (a) The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when a municipality or municipal entity may or must use a particular type of process; 5
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate; 10
- (g) bid documentation, advertising of and invitations for contracts;
- (h) procedures and mechanisms for—
- (i) the opening, registering and recording of bids in the presence of interested persons; 15
- (ii) the evaluation of bids to ensure best value for money;
- (iii) negotiating the final terms of contracts; and
- (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value; 20
- (j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
- (k) participation in the supply chain management system of persons who are not officials of the municipality or municipal entity, subject to section 117; 25
- (l) the barring of persons from participating in tendering or other bidding processes, including persons—
- (i) who were convicted for fraud or corruption during the past five years;
- (ii) who wilfully neglected, reneged on or failed to comply with a government contract during the past five years; or 30
- (iii) whose tax matters are not cleared by South African Revenue Service;
- (m) measures for—
- (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
- (ii) promoting ethics of officials and other role players involved in municipal supply chain management; 35
- (n) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by—
- (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or 40
- (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act;
- (o) the procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state; 45
- (p) contract management and dispute settling procedures; and
- (q) the delegation of municipal supply chain management powers and duties, including to officials.
- (2) The regulatory framework for municipal supply chain management must be fair, equitable, transparent, competitive and cost-effective. 50

Unsolicited bids

113. (1) A municipality or municipal entity is not obliged to consider an unsolicited bid received outside its normal bidding process.

(2) If a municipality or municipal entity decides to consider an unsolicited bid received outside a normal bidding process, it may do so only in accordance with a prescribed framework. 5

(3) The framework must strictly regulate and limit the power of municipalities and municipal entities to approve unsolicited bids received outside their normal tendering or other bidding processes.

Approval of tenders not recommended

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114. (1) If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation. 15

(2) Subsection (1) does not apply if a different tender was approved in order to rectify an irregularity.

Implementation of system

115. (1) The accounting officer of a municipality or municipal entity must— 20

(a) implement the supply chain management policy of the municipality or municipal entity; and

(b) take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices. 25

(2) No person may impede the accounting officer in fulfilling this responsibility.

Contracts and contract management

116. (1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must—

(a) be in writing; 30

(b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for—

(i) the termination of the contract or agreement in the case of non- or under-performance;

(ii) dispute resolution mechanisms to settle disputes between the parties; 35

(iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and

(iv) any other matters that may be prescribed.

(2) The accounting officer of a municipality or municipal entity must—

(a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced; 40

(b) monitor on a monthly basis the performance of the contractor under the contract or agreement;

(c) establish capacity in the administration of the municipality or municipal entity— 45

(i) to assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b); and

(ii) to oversee the day-to-day management of the contract or agreement; and

- (d) regularly report to the council of the municipality or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.
- (3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after— 5
- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) the local community— 10
- (i) has been given reasonable notice of the intention to amend the contract or agreement; and
- (ii) has been invited to submit representations to the municipality or municipal entity.

Councillors barred from serving on municipal tender committees

117. No councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. 15

Interference

118. No person may—
- (a) interfere with the supply chain management system of a municipality or municipal entity; or 20
- (b) amend or tamper with any tenders, quotations, contracts or bids after their submission.

Competency levels of officials involved in municipal supply chain management

119. (1) The accounting officer and all other officials of a municipality or municipal entity involved in the implementation of the supply chain management policy of the municipality or municipal entity must meet the prescribed competency levels. 25
- (2) A municipality and a municipal entity must for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels. 30
- (3) The National Treasury or a provincial treasury may assist municipalities and municipal entities in the training of officials referred to in subsection (1).

Part 2: Public-private partnerships

Conditions and process for public-private partnerships

120. (1) A municipality may enter into a public-private partnership agreement, but only if the municipality can demonstrate that the agreement will— 35
- (a) provide value for money to the municipality;
- (b) be affordable for the municipality; and
- (c) transfer appropriate technical, operational and financial risk to the private party. 40
- (2) A public-private partnership agreement must comply with any prescribed regulatory framework for public-private partnerships.
- (3) If the public-private partnership involves the provision of a municipal service, Chapter 8 of the Municipal Systems Act must also be complied with.
- (4) Before a public-private partnership is concluded, the municipality must conduct a feasibility study that— 45
- (a) explains the strategic and operational benefits of the public-private partnership for the municipality in terms of its objectives;
- (b) describes in specific terms— 50
- (i) the nature of the private party's role in the public-private partnership;
- (ii) the extent to which this role, both legally and by nature, can be performed by a private party; and

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- (iii) how the proposed agreement will—
- (aa) provide value for money to the municipality;
 - (bb) be affordable for the municipality;
 - (cc) transfer appropriate technical, operational and financial risks to the private party; and
 - (dd) impact on the municipality's revenue flows and its current and future budgets;
- (c) takes into account all relevant information; and
- (d) explains the capacity of the municipality to effectively monitor, manage and enforce the agreement.
- (5) The national government may assist municipalities in carrying out and assessing feasibility studies referred to in subsection (4).
- (6) When a feasibility study has been completed, the accounting officer of the municipality must—
- (a) submit the report on the feasibility study together with all other relevant documents to the council for a decision, in principle, on whether the municipality should continue with the proposed public-private partnership;
 - (b) at least 60 days prior to the meeting of the council at which the matter is to be considered, in accordance with section 21A of the Municipal Systems Act—
 - (i) make public particulars of the proposed public-private partnership, including the report on the feasibility study; and
 - (ii) invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed public-private partnership; and
 - (c) solicit the views and recommendations of—
 - (i) the National Treasury;
 - (ii) the national department responsible for local government;
 - (iii) if the public-private partnership involves the provision of water, sanitation, electricity or any other service as may be prescribed, the responsible national department; and
 - (iv) any other national or provincial organ of state as may be prescribed.
- (7) Part I of this Chapter applies to the procurement of public-private partnership agreements. Section 33 also applies if the agreement will have multi-year budgetary implications for the municipality within the meaning of that section.

CHAPTER 12

FINANCIAL REPORTING AND AUDITING

Preparation and adoption of annual reports

- 121.** (1) Every municipality and every municipal entity must for each financial year prepare an annual report in accordance with this Chapter. The council of a municipality must within nine months after the end of a financial year deal with the annual report of the municipality and of any municipal entity under the municipality's sole or shared control in accordance with section 129.
- (2) The purpose of an annual report is—
- (a) to provide a record of the activities of the municipality or municipal entity during the financial year to which the report relates;
 - (b) to provide a report on performance against the budget of the municipality or municipal entity for that financial year; and
 - (c) to promote accountability to the local community for the decisions made throughout the year by the municipality or municipal entity.
- (3) The annual report of a municipality must include—
- (a) the annual financial statements of the municipality, and in addition, if section 122(2) applies, consolidated annual financial statements, as submitted to the Auditor-General for audit in terms of section 126(1);