

# LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003

[ASSENTED TO 9 FEBRUARY 2004]

[DATE OF COMMENCEMENT: 1 JULY 2004]  
(Unless otherwise indicated)

*(English text signed by the President)*

**as amended by**

Municipal Fiscal Powers and Functions Act 12 of 2007

**Regulations under this Act**

EXEMPTIONS FROM SUPPLY CHAIN MANAGEMENT REGULATIONS, 2005 (GN 44 in GG 28411 of 18 January 2006)

EXEMPTION FROM CERTAIN SPECIFIC PROVISIONS OF THE ACT TO FACILITATE ELECTRICITY INDUSTRY RESTRUCTURING published (GN 305 in GG 29781 of 5 April 2007)

EXEMPTIONS OF MUNICIPALITIES AND MUNICIPAL ENTITIES FROM SECTION 122(2) AND (3) published (GN 522 in GG 30013 of 29 June 2007)

MUNICIPAL INVESTMENT REGULATIONS (GN R308 in GG27431 of 1 April 2005) (with effect from 1 April 2005)

MUNICIPAL PUBLIC-PRIVATE PARTNERSHIP REGULATIONS (GN R309 in GG 27431 of 1 April 2005)

MUNICIPAL REGULATIONS ON MINIMUM COMPETENCY LEVELS published (GN R493 in GG 29967 of 15 June 2007)

MUNICIPAL REGULATIONS ON DEBT DISCLOSURE published (GN R492 in GG 29966 of 15 June 2007)

MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS (GenN 868 in GG 27636 of 30 May 2005)

## ACT

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

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**CHAPTER 1**

**INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF ACT (ss 1-4)**

**1 Definitions**

(1) In this Act, unless the context indicates otherwise-

**'accounting officer'**-

- (a) in relation to a municipality, means the municipal official referred to in section 60; or
- (b) in relation to a municipal entity, means the official of the entity referred to in section 93,

and includes a person acting as the accounting officer;

**'allocation'**, in relation to a municipality, means-

- (a) a municipality's share of the local government's equitable share referred to in section 214 (1) (a) of the Constitution;
- (b) an allocation of money to a municipality in terms of section 214 (1) (c) of the Constitution;
- (c) an allocation of money to a municipality in terms of a provincial budget; or
- (d) any other allocation of money to a municipality by an organ of state, including by another municipality, otherwise than in compliance with a commercial or other business transaction;

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

**'annual report'**, in relation to a municipality or municipal entity, means an annual report contemplated in section 121;

**'approved budget'** means an annual budget-

- (a) approved by a municipal council; or

(b) approved by a provincial or the national executive following an intervention in terms of section 139 of the Constitution, and includes such an annual budget as revised by an adjustments budget in terms of section 28;

**'Auditor-General'** means the person appointed as Auditor-General in terms of section 193 of the Constitution, and includes a person-

- (a) acting as Auditor-General;
- (b) acting in terms of a delegation by the Auditor-General; or
- (c) designated by the Auditor-General to exercise a power or perform a duty of the Auditor-General;

**'basic municipal service'** means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment;

**'board of directors'**, in relation to a municipal entity, has the meaning assigned to it in section 1 of the Municipal Systems Act;

**'Budget Forum'** has the meaning assigned in section 1 of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997);

**'budget-related policy'** means a policy of a municipality affecting or affected by the annual budget of the municipality, including-

- (a) the tariffs policy which the municipality must adopt in terms of section 74 of the Municipal Systems Act;
- (b) the rates policy which the municipality must adopt in terms of legislation regulating municipal property rates; or
- (c) the credit control and debt collection policy which the municipality must adopt in terms of section 96 of the Municipal Systems Act;

**'budget year'** means the financial year for which an annual budget is to be approved in terms of section 16 (1);

**'category'**, in relation to municipalities, means a category A, B or C municipality referred to in section 155 (1) of the Constitution;

**'chief financial officer'** means a person designated in terms of section 80 (2) (a);

**'councillor'** means a member of a municipal council;

**'creditor'**, in relation to a municipality, means a person to whom money is owing by the municipality;

**'current year'** means the financial year which has already commenced, but not yet ended;

**'debt'** means-

- (a) a monetary liability or obligation created by a financing agreement, note, debenture, bond or overdraft, or by the issuance of municipal debt instruments; or
- (b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another;

**'delegation'**, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty;

**'district municipality'** means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 (1) of the Constitution as a category C municipality;

**'financial recovery plan'** means a plan prepared in terms of section 141;

**'financial statements'**, in relation to municipality or municipal entity, means

statements consisting of at least-

- (a) a statement of financial position;
- (b) a statement of financial performance;
- (c) a cash-flow statement;
- (d) any other statements that may be prescribed; and
- (e) any notes to these statements;

**'financial year'** means a year ending on 30 June;

**'financing agreement'** includes any loan agreement, lease, instalment purchase contract or hire purchase arrangement under which a municipality undertakes to repay a long-term debt over a period of time;

**'fruitless and wasteful expenditure'** means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

**'Head'**, in relation to the Municipal Finance Recovery Service, means a person-

- (a) appointed in terms of section 159 as the Head of the Service; or
- (b) acting as the Head of the Service;

**'irregular expenditure'**, in relation to a municipality or municipal entity, means-

- (a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;
- (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
- (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act 20 of 1998); or
- (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law,

but excludes expenditure by a municipality which falls within the definition of 'unauthorised expenditure';

**'investment'**, in relation to funds of a municipality, means-

- (a) the placing on deposit of funds of a municipality with a financial institution; or
- (b) the acquisition of assets with funds of a municipality not immediately required, with the primary aim of preserving those funds;

**'lender'**, in relation to a municipality, means a person who provides debt finance to a municipality;

**'local community'** has the meaning assigned to it in section 1 of the Municipal Systems Act;

**'local municipality'** means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155 (1) of the Constitution as a category B municipality;

**'long-term debt'** means debt repayable over a period exceeding one year;

**'mayor'**, in relation to-

- (a) a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal

Structures Act; or

(b) a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of that Act;

'**MEC for finance**' means the member of the Executive Council of a province who is responsible for finance in that province;

'**MEC for local government**' means the member of the Executive Council of a province who is responsible for local government in that province;

'**Minister**' means the Cabinet member responsible for finance;

'**month**' means one of the 12 months of a calendar year;

'**multi-jurisdictional service utility**' has the meaning assigned to it in section 1 of the Municipal Systems Act;

'**municipal council**' or '**council**' means the council of a municipality referred to in section 18 of the Municipal Structures Act;

'**municipal debt instrument**' means any note, bond, debenture or other evidence of indebtedness issued by a municipality, including dematerialised or electronic evidence of indebtedness intended to be used in trade;

'**municipal entity**' has the meaning assigned to it in section 1 of the Municipal Systems Act;

'**Municipal Financial Recovery Service**' means the Municipal Financial Recovery Service established by section 157;

'**municipality**'-

(a) when referred to as a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; or

(b) when referred to as a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);

'**municipal manager**' means a person appointed in terms of section 82 (1) (a) or (b) of the Municipal Structures Act;

'**municipal service**' has the meaning assigned to it in section 1 of the Municipal Systems Act;

'**Municipal Structures Act**' means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

'**Municipal Systems Act**' means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

'**municipal tariff**' means a tariff for services which a municipality may set for the provision of a service to the local community, and includes a surcharge on such tariff;

'**municipal tax**' means property rates or other taxes, levies or duties that a municipality may impose;

'**National Treasury**' means the National Treasury established by section 5 of the Public Finance Management Act;

'**official**', in relation to a municipality or municipal entity, means-

(a) an employee of a municipality or municipal entity;

(b) a person seconded to a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity; or

(c) a person contracted by a municipality or municipal entity to work as a member of the staff of the municipality or municipal entity otherwise than as an employee;

'**organised local government**' means an organisation recognised in terms of

section 2 (1) of the Organised Local Government Act, 1997 (Act 52 of 1997), to represent local government nationally or provincially;

**'overspending'**-

- (a) in relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the municipality during a financial year to exceed the total amount appropriated in that year's budget for its operational or capital expenditure, as the case may be;
- (b) in relation to a vote, means causing expenditure under the vote to exceed the amount appropriated for that vote; or
- (c) in relation to expenditure under section 26, means causing expenditure under that section to exceed the limits allowed in subsection (5) of that section;

**'parent municipality'** has the meaning assigned to it in section 1 of the Municipal Systems Act;

**'past financial year'** means the financial year preceding the current year;

**'political office-bearer'**, in relation to a municipality, means-

- (a) the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive or mayoral committee of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act; or
- (b) a councillor referred to in section 57 (1) of this Act;

**'political structure'**, in relation to a municipality, means-

- (a) the council of a municipality; or
- (b) any committee or other collective structure of a municipality elected, designated or appointed in terms of a specific provision of the Municipal Structures Act;

**'prescribe'** means prescribe by regulation in terms of section 168;

**'primary bank account'** means a bank account referred to in section 8 (1);

**'private company'** means a company referred to in sections 19 and 20 of the Companies Act, 1973 (Act 61 of 1973);

**'provincial department'** means a department listed in Schedule 2 of the Public Service Act, 1994 (Proclamation 103 of 1994), which falls within a provincial administration listed in Schedule 1 to that Act;

**'provincial treasury'** means a treasury established in terms of section 17 of the Public Finance Management Act;

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

**'quarter'** means any of the following periods in a financial year:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March; or
- (d) 1 April to 30 June;

**'senior manager'**-

- (a) in relation to a municipality, means a manager referred to in section 56 of the Municipal Systems Act; or
- (b) in relation to a municipal entity, means a manager directly accountable to the chief executive officer of the entity;

**'security'** means any mechanism intended to secure the interest of a lender or

investor, and includes any of the mechanisms mentioned in section 48 (2);

**'service delivery agreement'** has the meaning assigned to it in section 1 of the Municipal Systems Act;

**'service delivery and budget implementation plan'** means a detailed plan approved by the mayor of a municipality in terms of section 53 (1) (c) (ii) for implementing the municipality's delivery of municipal services and its annual budget, and which must indicate-

- (a) projections for each month of-
  - (i) revenue to be collected, by source; and
  - (ii) operational and capital expenditure, by vote;
- (b) service delivery targets and performance indicators for each quarter; and
- (c) any other matters that may be prescribed,

and includes any revisions of such plan by the mayor in terms of section 54 (1) (c);

**'service utility'** has the meaning assigned to it in section 1 of the Municipal Systems Act;

**'shared control'**, in relation to a municipal entity, means the rights and powers a municipality has over a municipal entity which is-

- (a) a private company in which effective control as defined in section 1 of the Municipal Systems Act is vested in that municipality and one or more other municipalities collectively; or
- (b) a multi-jurisdictional service utility in which that municipality participates;

**'short-term debt'** means debt repayable over a period not exceeding one year;

**'sole control'**, in relation to a municipal entity, means the rights and powers a municipality has over a municipal entity which is-

- (a) a private company in which effective control as defined in section 1 of the Municipal Systems Act is vested in that municipality alone; or
- (b) a service utility established by the municipality;

**'standards of generally recognised accounting practice'** means an accounting practice complying with standards applicable to municipalities or municipal entities and issued in terms of Chapter 11 of the Public Finance Management Act;

**'this Act'** includes regulations made in terms of section 168 or 175;

**'unauthorised expenditure'**, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11 (3), and includes-

- (a) overspending of the total amount appropriated in the municipality's approved budget;
- (b) overspending of the total amount appropriated for a vote in the approved budget;
- (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of 'allocation' otherwise than in accordance with any conditions of the allocation; or
- (f) a grant by the municipality otherwise than in accordance with this Act;

**'vote'** means-

- (a) one of the main segments into which a budget of a municipality is divided

for the appropriation of money for the different departments or functional areas of the municipality; and

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

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

## **2 Object of Act**

The object of this Act is to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for-

- (a) ensuring transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities;
- (b) the management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings;
- (c) budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government;
- (d) borrowing;
- (e) the handling of financial problems in municipalities;
- (f) supply chain management; and
- (g) other financial matters.

## **3 Institutions to which Act applies**

(1) This Act applies to-

- (a) all municipalities;
- (b) all municipal entities; and
- (c) national and provincial organs of state to the extent of their financial dealings with municipalities.

(2) In the event of any inconsistency between a provision of this Act and any other legislation in force when this Act takes effect and which regulates any aspect of the fiscal and financial affairs of municipalities or municipal entities, the provision of this Act prevails.

## **4 Amendments to Act**

Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament only after the Minister and the Financial and Fiscal Commission have been consulted in writing on the contents of the draft legislation, and have responded in writing.

### **CHAPTER 2**

## **SUPERVISION OVER LOCAL GOVERNMENT FINANCE MANAGEMENT (ss 5-6)**

### **5 General functions of National Treasury and provincial treasuries**

(1) The National Treasury must-

- (a) fulfil its responsibilities in terms of Chapter 13 of the Constitution and this Act;
- (b) promote the object of this Act as stated in section 2-
  - (i) within the framework of co-operative government set out in Chapter 3 of the Constitution; and
  - (ii) when coordinating intergovernmental financial and fiscal relations in

terms of the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997), the annual Division of Revenue Act and the Public Finance Management Act; and

- (c) enforce compliance with the measures established in terms of section 216 (1) of the Constitution, including those established in terms of this Act.

(2) To the extent necessary to comply with subsection (1), the National Treasury may-

- (a) monitor the budgets of municipalities to establish whether they-
- (i) are consistent with the national government's fiscal and macro-economic policy; and
  - (ii) comply with Chapter 4;
- (b) promote good budget and fiscal management by municipalities, and for this purpose monitor the implementation of municipal budgets, including their expenditure, revenue collection and borrowing;
- (c) monitor and assess compliance by municipalities and municipal entities with-
- (i) this Act; and
  - (ii) any applicable standards of generally recognised accounting practice and uniform expenditure and revenue classification systems;
- (d) investigate any system of financial management and internal control in any municipality or municipal entity and recommend improvements;
- (e) take appropriate steps if a municipality or municipal entity commits a breach of this Act, including the stopping of funds to a municipality in terms of section 216 (2) of the Constitution if the municipality, or a municipal entity under the sole or shared control of that municipality, commits a serious or persistent material breach of any measures referred to in that section; and
- (f) take any other appropriate steps necessary to perform its functions effectively.
- (3) A provincial treasury must in accordance with a prescribed framework-
- (a) fulfil its responsibilities in terms of this Act;
  - (b) promote the object of this Act as stated in section 2 within the framework of co-operative government set out in Chapter 3 of the Constitution; and
  - (c) assist the National Treasury in enforcing compliance with the measures established in terms of section 216 (1) of the Constitution, including those established in terms of this Act.

[Date of commencement of sub-s. (3): 1 July 2005.]

(4) To the extent necessary to comply with subsection (3), a provincial treasury-

- (a) must monitor-
- (i) compliance with this Act by municipalities and municipal entities in the province;
  - (ii) the preparation by municipalities in the province of their budgets;
  - (iii) the monthly outcome of those budgets; and
  - (iv) the submission of reports by municipalities in the province as required in terms of this Act;
- (b) may assist municipalities in the province in the preparation of their budgets;
- (c) may exercise any powers and must perform any duties delegated to it by the National Treasury in terms of this Act; and

- (d) may take appropriate steps if a municipality or municipal entity in the province commits a breach of this Act.

[Date of commencement of sub-s. (4): 1 July 2005.]

(5) The functions assigned to the National Treasury or a provincial treasury in terms of this Act are additional to those assigned to the National Treasury or a provincial treasury in terms of the Public Finance Management Act.

(6) The Minister, as the head of the National Treasury, takes all decisions of the National Treasury in terms of this Act, except those decisions taken as a result of a delegation in terms of section 6 (1).

(7) The MEC for finance in a province, as the head of the provincial treasury, takes all decisions of the provincial treasury in terms of this Act, except those decisions taken as a result of a delegation in terms of section 6 (4).

(8) A provincial treasury must submit all information submitted to it in terms of this Act to the National Treasury on a quarterly basis, or when requested.

[Date of commencement of sub-s. (8): 1 July 2005.]

## **6 Delegations by National Treasury**

(1) The Minister may delegate any of the powers or duties assigned to the National Treasury in terms of this Act to-

- (a) the Director-General of the National Treasury; or
- (b) the MEC responsible for a provincial department, as the Minister and the MEC may agree.

(2) The Minister may not delegate the National Treasury's power to stop funds to a municipality in terms of section 5 (2) (e).

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

- (a) must be in writing;
- (b) is subject to any limitations or conditions which the Minister may impose;
- (c) may, subject to any such limitations or conditions, authorise-
  - (i) the Director-General of the National Treasury to sub-delegate a delegated power or duty to a staff member of the National Treasury; and
  - (ii) the MEC responsible for the relevant provincial department to sub-delegate a delegated power or duty to a staff member of that department; and

(d) does not divest the National Treasury of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(4) The MEC for finance in a province may delegate any of the powers or duties assigned to a provincial treasury in terms of this Act to the head of the relevant provincial department of which the provincial treasury forms part.

(5) A delegation in terms of subsection (4)-

- (a) must be in writing;
- (b) is subject to any limitations or conditions which the MEC for finance in the province may impose;
- (c) may, subject to any such limitations or conditions, authorise the relevant head of the provincial department to sub-delegate a delegated power or duty to a staff member of that treasury; and
- (d) does not divest the provincial treasury of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(6) The Minister or MEC for finance in a province, as may be appropriate, may

confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

### **CHAPTER 3**

#### **MUNICIPAL REVENUE (ss 7-14)**

##### *Part 1*

##### *Municipal bank accounts (ss 7-12)*

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

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

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

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

- (a) abroad;
- (b) with an institution not registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); or
- (c) otherwise than in the name of the municipality.

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

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

(1) A municipality must have a primary bank account. If a municipality-

- (a) has only one bank account, that account is its primary bank account; or
- (b) has more than one bank account, it must designate one of those bank accounts as its primary bank account.

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

- (a) All allocations to the municipality, including those made to the municipality for transmission to a municipal entity or other external mechanism assisting the municipality in the performance of its functions;
- (b) all income received by the municipality on its investments;
- (c) all income received by the municipality in connection with its interest in any municipal entity, including dividends;
- (d) all money collected by a municipal entity or other external mechanism on behalf of the municipality; and
- (e) any other moneys as may be prescribed.

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

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

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

in writing, at least 30 days before effecting the change.

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

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

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

[Date of commencement of s. 9: 1 April 2005.]

### **10 Control of municipal bank accounts**

(1) The accounting officer of a municipality-

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

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

### **11 Withdrawals from municipal bank accounts**

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

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

(2) Any authorisation in terms of subsection (1) to a senior financial official to withdraw money or to authorise the withdrawal of money from a bank account must be in accordance with a framework as may be prescribed. The accounting officer may not

authorise any official other than the chief financial officer to withdraw money or to authorise the withdrawal of money from the municipality's primary bank account if the municipality has a primary bank account which is separate from its other bank accounts.

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

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

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

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

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

(1) No political structure or office-bearer of a municipality may set up a relief, charitable, trust or other fund of whatever description except in the name of the municipality. Only the municipal manager may be the accounting officer of any such fund.

(2) A municipality may in terms of section 7 open a separate bank account in the name of the municipality for the purpose of a relief, charitable, trust or other fund.

(3) Money received by the municipality for the purpose of a relief, charitable, trust or other fund must be paid into a bank account of the municipality, or if a separate bank account has been opened in terms of subsection (2), into that account.

(4) Money in a separate account opened in terms of subsection (2) may be withdrawn from the account without appropriation in terms of an approved budget, but only-

(a) by or on the written authority of the accounting officer acting in accordance with decisions of the municipal council; and

(b) for the purposes for which, and subject to any conditions on which, the fund was established or the money in the fund was donated.

### ***Part 2***

#### ***Cash, investment and asset management (ss 13-14)***

## **13 Cash management and investments**

(1) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may prescribe a framework within which municipalities must-

(a) conduct their cash management and investments; and

(b) invest money not immediately required.

(2) A municipality must establish an appropriate and effective cash management and investment policy in accordance with any framework that may be prescribed in terms of subsection (1).

(3) A bank where a municipality at the end of a financial year holds a bank account, or held a bank account at any time during a financial year, must-

(a) within 30 days after the end of that financial year notify the Auditor-General, in writing, of such bank account, including-

(i) the type and number of the account; and

(ii) the opening and closing balances of that bank account in that financial year; and

(b) promptly disclose information regarding the account when so requested by the National Treasury or the Auditor-General.

(4) A bank, insurance company or other financial institution which at the end of a financial year holds, or at any time during a financial year held, an investment for a municipality, must-

- (a) within 30 days after the end of that financial year, notify the Auditor-General, in writing, of that investment, including the opening and closing balances of that investment in that financial year; and
- (b) promptly disclose information regarding the investment when so requested by the National Treasury or the Auditor-General.

#### **14 Disposal of capital assets**

(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

(2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public-

- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

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

(4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2) (a) and (b) in respect of movable capital assets below a value determined by the council.

(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.

(6) This section does not apply to the transfer of a capital asset to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework.<sup>1\*</sup>

### **CHAPTER 4**

#### **MUNICIPAL BUDGETS (ss 15-33)**

#### **15 Appropriation of funds for expenditure**

A municipality may, except where otherwise provided in this Act, incur expenditure only-

- (a) in terms of an approved budget; and
- (b) within the limits of the amounts appropriated for the different votes in an approved budget.

#### **16 Annual budgets**

(1) The council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year.

(2) In order for a municipality to comply with subsection (1), the mayor of the municipality must table the annual budget at a council meeting at least 90 days before the start of the budget year.

(3) Subsection (1) does not preclude the appropriation of money for capital expenditure for a period not exceeding three financial years, provided a separate appropriation is made for each of those financial years.

#### **17 Contents of annual budgets and supporting documents**

(1) An annual budget of a municipality must be a schedule in the prescribed format-

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

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

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

- (a) Draft resolutions-
  - (i) approving the budget of the municipality;
  - (ii) imposing any municipal tax and setting any municipal tariffs as may be required for the budget year; and
  - (iii) approving any other matter that may be prescribed;
- (b) measurable performance objectives for revenue from each source and for each vote in the budget, taking into account the municipality's integrated development plan;
- (c) a projection of cash flow for the budget year by revenue source, broken down per month;
- (d) any proposed amendments to the municipality's integrated development plan following the annual review of the integrated development plan in terms of section 34 of the Municipal Systems Act;
- (e) any proposed amendments to the budget-related policies of the municipality;
- (f) particulars of the municipality's investments;
- (g) any prescribed budget information on municipal entities under the sole or shared control of the municipality;
- (h) particulars of all proposed new municipal entities which the municipality intends to establish or in which the municipality intends to participate;
- (i) particulars of any proposed service delivery agreements, including material amendments to existing service delivery agreements;
- (j) particulars of any proposed allocations or grants by the municipality to-
  - (i) other municipalities;
  - (ii) any municipal entities and other external mechanisms assisting the municipality in the exercise of its functions or powers;
  - (iii) any other organs of state;
  - (iv) any organisations or bodies referred to in section 67 (1);
- (k) the proposed cost to the municipality for the budget year of the salary, allowances and benefits of-

- (i) each political office-bearer of the municipality;
  - (ii) councillors of the municipality; and
  - (iii) the municipal manager, the chief financial officer, each senior manager of the municipality and any other official of the municipality having a remuneration package greater than or equal to that of a senior manager;
- (l) the proposed cost for the budget year to a municipal entity under the sole or shared control of the municipality of the salary, allowances and benefits of-
- (i) each member of the entity's board of directors; and
  - (ii) the chief executive officer and each senior manager of the entity; and
- (m) any other supporting documentation as may be prescribed.

## **18 Funding of expenditure**

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

## **19 Capital projects**

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

## **20 Matters to be prescribed**

- (1) The Minister, acting with the concurrence of the Cabinet member responsible for local government-
- (a) must prescribe the form of the annual budget of municipalities; and
  - (b) may prescribe-
    - (i) the form of resolutions and supporting documentation relating to the annual budget;
    - (ii) the number of years preceding and following the budget year for which revenue and expenditure history or projections must be shown

- in the supporting documentation;
- (iii) inflation projections to be used with regard to the budget;
- (iv) uniform norms and standards concerning the setting of municipal tariffs, financial risks and other matters where a municipality uses a municipal entity or other external mechanism for the performance of a municipal service or other function;
- (v) uniform norms and standards concerning the budgets of municipal entities; or
- (vi) any other uniform norms and standards aimed at promoting transparency and expenditure control.

(2) .....

[Sub-s. (2) repealed by s. 13 of Act 12 of 2007.]

## **21 Budget preparation process**

- (1) The mayor of a municipality must-
  - (a) co-ordinate the processes for preparing the annual budget and for reviewing the municipality's integrated development plan and budget-related policies to ensure that the tabled budget and any revisions of the integrated development plan and budget-related policies are mutually consistent and credible;
  - (b) at least 10 months before the start of the budget year, table in the municipal council a time schedule outlining key deadlines for-
    - (i) the preparation, tabling and approval of the annual budget;
    - (ii) the annual review of-
      - (aa) the integrated development plan in terms of section 34 of the Municipal Systems Act; and
      - (bb) the budget-related policies;
    - (iii) the tabling and adoption of any amendments to the integrated development plan and the budget-related policies; and
    - (iv) any consultative processes forming part of the processes referred to in subparagraphs (i), (ii) and (iii).
- (2) When preparing the annual budget, the mayor of a municipality must-
  - (a) take into account the municipality's integrated development plan;
  - (b) take all reasonable steps to ensure that the municipality revises the integrated development plan in terms of section 34 of the Municipal Systems Act, taking into account realistic revenue and expenditure projections for future years;
  - (c) take into account the national budget, the relevant provincial budget, the national government's fiscal and macro-economic policy, the annual Division of Revenue Act and any agreements reached in the Budget Forum;
  - (d) consult-
    - (i) the relevant district municipality and all other local municipalities within the area of the district municipality, if the municipality is a local municipality;
    - (ii) all local municipalities within its area, if the municipality is a district municipality;
    - (iii) the relevant provincial treasury, and when requested, the National Treasury; and
    - (iv) any national or provincial organs of state, as may be prescribed; and

- (e) provide, on request, any information relating to the budget-
  - (i) to the National Treasury; and
  - (ii) subject to any limitations that may be prescribed, to-
    - (aa) the national departments responsible for water, sanitation, electricity and any other service as may be prescribed;
    - (bb) any other national and provincial organ of states, as may be prescribed; and
    - (cc) another municipality affected by the budget.

## **22 Publication of annual budgets**

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

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

## **23 Consultations on tabled budgets**

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

- (a) the local community; and
- (b) the National Treasury, the relevant provincial treasury and any provincial or national organs of state or municipalities which made submissions on the budget.

(2) After considering all budget submissions, the council must give the mayor an opportunity-

- (a) to respond to the submissions; and
- (b) if necessary, to revise the budget and table amendments for consideration by the council.

(3) The National Treasury may issue guidelines on the manner in which municipal councils should process their annual budgets, including guidelines on the formation of a committee of the council to consider the budget and to hold public hearings.

(4) No guidelines issued in terms of subsection (3) are binding on a municipal council unless adopted by the council.

## **24 Approval of annual budgets**

(1) The municipal council must at least 30 days before the start of the budget year consider approval of the annual budget.

(2) An annual budget-

- (a) must be approved before the start of the budget year;
- (b) is approved by the adoption by the council of a resolution referred to in section 17 (3) (a) (i); and
- (c) must be approved together with the adoption of resolutions as may be necessary-
  - (i) imposing any municipal tax for the budget year;

- (ii) setting any municipal tariffs for the budget year;
- (iii) approving measurable performance objectives for revenue from each source and for each vote in the budget;
- (iv) approving any changes to the municipality's integrated development plan; and
- (v) approving any changes to the municipality's budget-related policies.

(3) The accounting officer of a municipality must submit the approved annual budget to the National Treasury and the relevant provincial treasury.

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

(1) If a municipal council fails to approve an annual budget, including revenue-raising measures necessary to give effect to the budget, the council must reconsider the budget and again vote on the budget, or on an amended version thereof, within seven days of the council meeting that failed to approve the budget.

(2) The process provided for in subsection (1) must be repeated until a budget, including revenue-raising measures necessary to give effect to the budget, is approved.

(3) If a municipality has not approved an annual budget, including revenue-raising measures necessary to give effect to the budget, by the first day of the budget year, the mayor must immediately comply with section 55.

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

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

- (a) appointing an administrator until a newly elected council has been declared elected; and
- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

(2) Sections 34 (3) and (4) and 35 of the Municipal Structures Act apply when a provincial executive dissolves a municipal council.

(3) When approving a temporary budget for a municipality in terms of subsection (1) (b), the provincial executive is not bound by any provision relating to the budget process applicable to a municipality in terms of this Act or other legislation. Such a budget must, after the intervention has ended, be replaced by a budget approved by the newly elected council, provided that the provisions of this Chapter relating to annual budgets are substantially complied with in line with any revised time frames approved by the MEC for finance in the province.

(4) Until a budget for the municipality is approved in terms of subsection (1), funds for the requirements of the municipality may, with the approval of the MEC for finance in the province, be withdrawn from the municipality's bank accounts in accordance with subsection (5).

(5) Funds withdrawn from a municipality's bank accounts in terms of subsection (4)-

- (a) may be used only to defray current and capital expenditure in connection with votes for which funds were appropriated in the approved budget for the previous financial year; and
- (b) may not-
  - (i) during any month, exceed eight per cent of the total amount

appropriated in that approved budget for current expenditure, which percentage must be scaled down proportionately if revenue flows are not at least at the same level as the previous financial year; and

(ii) exceed the amount actually available.

(6) The funds provided for in subsection (4) are not additional to funds appropriated for the budget year, and any funds withdrawn in terms of subsection (5) must be regarded as forming part of the funds appropriated in a subsequently approved annual budget for the budget year.

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

(1) The mayor of a municipality must, upon becoming aware of any impending non-compliance by the municipality of any provisions of this Act or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes, inform the MEC for finance in the province, in writing, of such impending non-compliance.

(2) If the impending non-compliance pertains to a time provision, except section 16 (1), the MEC for finance may, on application by the mayor and on good cause shown, extend any time limit or deadline contained in that provision, provided that no such extension may compromise compliance with section 16 (1). An MEC for finance must-

- (a) exercise the power contained in this subsection in accordance with a prescribed framework; and
- (b) promptly notify the National Treasury, in writing, of any extensions given in terms of this subsection, together with the name of the municipality and the reasons.

(3) The mayor of a municipality must, upon becoming aware of any actual non-compliance by the municipality of a provision of this Chapter, inform the council, the MEC for finance and the National Treasury, in writing, of

- (a) such non-compliance; and
- (b) any remedial or corrective measures the municipality intends to implement to avoid a recurrence.

(4) Non-compliance by a municipality with a provision of this Chapter relating to the budget process or a provision in any legislation relating to the approval of a budget-related policy, does not affect the validity of an annual or adjustments budget.

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

## **28 Municipal adjustments budgets**

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

(2) An adjustments budget-

- (a) must adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- (b) may appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;
- (c) may, within a prescribed framework, authorise unforeseeable and unavoidable expenditure recommended by the mayor of the municipality;
- (d) may authorise the utilisation of projected savings in one vote towards spending under another vote;

- (e) may authorise the spending of funds that were unspent at the end of the past financial year where the under-spending could not reasonably have been foreseen at the time to include projected roll-overs when the annual budget for the current year was approved by the council;
  - (f) may correct any errors in the annual budget; and
  - (g) may provide for any other expenditure within a prescribed framework.
- (3) An adjustments budget must be in a prescribed form.
- (4) Only the mayor may table an adjustments budget in the municipal council, but an adjustments budget in terms of subsection (2) (b) to (g) may only be tabled within any prescribed limitations as to timing or frequency.
- (5) When an adjustments budget is tabled, it must be accompanied by-
- (a) an explanation how the adjustments budget affects the annual budget;
  - (b) a motivation of any material changes to the annual budget;
  - (c) an explanation of the impact of any increased spending on the annual budget and the annual budgets for the next two financial years; and
  - (d) any other supporting documentation that may be prescribed.
- (6) Municipal tax and tariffs may not be increased during a financial year.  
[Sub-s. (6) substituted by s. 13 of Act 12 of 2007.]
- (7) Sections 22 (b), 23 (3) and 24 (3) apply in respect of an adjustments budget, and in such application a reference in those sections to an annual budget must be read as a reference to an adjustments budget.

[Date of commencement of s. 28: 1 July 2005.]

## **29 Unforeseen and unavoidable expenditure**

- (1) The mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.
- (2) Any such expenditure-
- (a) must be in accordance with any framework that may be prescribed;
  - (b) may not exceed a prescribed percentage of the approved annual budget;
  - (c) must be reported by the mayor to the municipal council at its next meeting; and
  - (d) must be appropriated in an adjustments budget.
- (3) If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 32 applies.

## **30 Unspent funds**

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

## **31 Shifting of funds between multi-year appropriations**

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

- (a) the increase does not exceed 20 per cent of that year's appropriation for the programme;
- (b) the increase is funded within the following year's appropriation for that programme;
- (c) the municipal manager certifies that-

- (i) actual revenue for the financial year is expected to exceed budgeted revenue; and
- (ii) sufficient funds are available for the increase without incurring further borrowing beyond the annual budget limit;
- (d) prior written approval is obtained from the mayor for the increase; and
- (e) the documents referred to in paragraphs (c) and (d) are submitted to the relevant provincial treasury and the Auditor-General.

### **32 Unauthorised, irregular or fruitless and wasteful expenditure**

- (1) Without limiting liability in terms of the common law or other legislation-
  - (a) a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;
  - (b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
  - (c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or
  - (d) any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.
- (2) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure-
  - (a) in the case of unauthorised expenditure, is-
    - (i) authorised in an adjustments budget; or
    - (ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and
  - (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.
- (3) If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.
- (4) The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of-
  - (a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;
  - (b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
  - (c) the steps that have been taken-
    - (i) to recover or rectify such expenditure; and
    - (ii) to prevent a recurrence of such expenditure.
- (5) The writing off in terms of subsection (2) of any unauthorised, irregular or

fruitless and wasteful expenditure as irrecoverable, is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of this Act relating to such unauthorised, irregular or fruitless and wasteful expenditure.

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

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

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

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

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

### **33 Contracts having future budgetary implications**

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

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

- benefit from the contract;
- (ii) it approves the entire contract exactly as it is to be executed; and
  - (iii) it authorises the municipal manager to sign the contract on behalf of the municipality.
- (2) The process set out in subsection (1) does not apply to-
- (a) contracts for long-term debt regulated in terms of section 46 (3);
  - (b) employment contracts; or
  - (c) contracts-
    - (i) for categories of goods as may be prescribed; or
    - (ii) in terms of which the financial obligation on the municipality is below-
      - (aa) a prescribed value; or
      - (bb) a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded.
- (3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality-
- (i) must be made available in their entirety to the municipal council; and
  - (ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).
- (b) Paragraph (a) (i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.
- (4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

## CHAPTER 5

### CO-OPERATIVE GOVERNMENT (ss 34-44)

#### **34 Capacity building**

- (1) The national and provincial governments must by agreement assist municipalities in building the capacity of municipalities for efficient, effective and transparent financial management.
- (2) The national and provincial governments must support the efforts of municipalities to identify and resolve their financial problems.
- (3) When performing its monitoring function in terms of section 155 (6) of the Constitution, a provincial government-
- (a) must share with a municipality the results of its monitoring to the extent that those results may assist the municipality in improving its financial management;
  - (b) must, upon detecting any emerging or impending financial problems in a municipality, alert the municipality to those problems; and
  - (c) may assist the municipality to avert or resolve financial problems.

[Date of commencement of sub-s. (3): 1 July 2005.]

- (4) Non-compliance with this section or any other provision of this Act by the national or a provincial government does not affect the responsibility of a municipality, its political structures, political office-bearers and officials to comply with this Act.

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

National and provincial departments and public entities must-

- (a) in their fiscal and financial relations with the local sphere of government, promote co-operative government in accordance with Chapter 3 of the Constitution;

- (b) promptly meet their financial commitments towards municipalities;
- (c) provide timely information and assistance to municipalities to enable municipalities-
  - (i) to plan properly, including in developing and revising their integrated development plans; and
  - (ii) to prepare their budgets in accordance with the processes set out in Chapter 4 of this Act; and
- (d) comply with the Public Finance Management Act, the annual Division of Revenue Act and the Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997), to the extent that those Acts regulate intergovernmental relations with the local sphere of government.

### **36 National and provincial allocations to municipalities**

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

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

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

(1) Municipalities must-

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

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

### **38 Stopping of funds to municipalities**

(1) The National Treasury may stop-

- (a) the transfer of funds due to a municipality as its share of the local government's equitable share referred to in section 214 (1) (a) of the Constitution, but only if the municipality commits a serious or persistent breach of the measures established in terms of section 216 (1) of the Constitution; or

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

[Date of commencement of s. 38: 1 April 2005.]

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

- (1) A decision by the National Treasury to stop the transfer to a municipality of funds referred to in section 38 (1) (a)-
  - (a) lapses after the expiry of 120 days, subject to approval of the decision in terms of paragraph (b) of this subsection and renewal of the decision in terms of subsection (2); and
  - (b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 75 of the Constitution, and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the National Treasury to stop the transfer of the funds.
- (2) Parliament may renew a decision to stop the transfer of funds referred to in section 38 (1) (a) for no more than 120 days at a time, following the process established in terms of subsection (1) (b) of this section.
- (3) Before Parliament approves or renews a decision to stop the transfer of funds to

a municipality-

- (a) the Auditor-General must report to Parliament, if requested to do so by Parliament; and
- (b) the municipality must be given an opportunity to answer the allegations against it, and to state its case, before a committee.

[Date of commencement of s. 39: 1 April 2005.]

#### **40 Stopping of other allocations to municipalities**

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

[Date of commencement of s. 40: 1 April 2005.]

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

(1) The National Treasury must monitor-

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

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

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

[Date of commencement of s. 41: 1 April 2005.]

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

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

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

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

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

- (a) a motivation of the reasons for the proposed amendment;
- (b) an explanation of how the amendment takes account of-
  - (i) the national government's inflation targets and other macroeconomic policy objectives;
  - (ii) steps taken by the organ of state to improve its competitiveness or

- efficiency in order to reduce costs;
  - (iii) any objectives or targets as outlined in any corporate or other governance plan applicable to that organ of state;
  - (c) any written comments received from the National Treasury, organised local government or any municipalities; and
  - (d) an explanation of how such comments have been taken into account.
- (4) The executive authority of the organ of state must table the amendment and the documents referred to in subsection (3) in Parliament or the relevant provincial legislature, as may be appropriate.
- (5) Unless approved otherwise by the Minister, an amendment to a pricing structure which is tabled in Parliament or the relevant provincial legislature-
- (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.
- [Date of commencement of s. 42: 1 April 2005.]

#### **43 Applicability of tax and tariff capping on municipalities**

- (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.
- (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.
- (4) This section does not apply to a municipal tax authorised in terms of the Municipal Fiscal Powers and Functions Act, 2007.
- [Sub-s. (4) added by s. 13 of Act 12 of 2007.]

#### **44 Disputes between organs of state**

- (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.
- (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.
- (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 (ss 45-51)

### 45 Short-term debt

- (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.
- (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.
- (3) For the purpose of subsection (2) (a), a municipal council may-
- (a) approve a short-term debt transaction individually; or
  - (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  
[Date of commencement of para. (a): 1 July 2008.]
  - (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.

### 46 Long-term debt

- (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-
- (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;
- (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
- (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;
- (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
- (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).

#### **47 Conditions applying to both short-term and long-term debt**

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
- (b) section 48 (3) has been complied with, if security is to be provided by the municipality.

#### **48 Security**

(1) A municipality may, by resolution of its council, provide security for-

- (a) any of its debt obligations;
- (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.

(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);
- (c) undertaking to deposit funds with the lender, investor or third party as security;
- (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;
- (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;
- (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
- (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

- (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.

(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.

(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.

#### **49 Disclosure**

(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
- (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.

#### **50 Municipal guarantees**

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;
- (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-
  - (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.

#### **51 National and provincial guarantees**

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 (ss 52-59)**

**52 General responsibilities**

The mayor of a municipality-

- (a) must provide general political guidance over the fiscal and financial affairs of the municipality;
- (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;
- (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
- (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.

**53 Budget processes and related matters**

(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
- (c) take all reasonable steps to ensure-
  - (i) that the municipality approves its annual budget before the start of the budget year;
  - (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-
    - (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
    - (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.

(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

- (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.

#### **54 Budgetary control and early identification of financial problems**

(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-

- (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;
- (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
  - (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.

(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;
  - (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.

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

#### **55 Report to provincial executive if conditions for provincial intervention exist**

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-

- (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.

## **56 Exercise of rights and powers over municipal entities**

(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.

(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.

## **57 Municipalities which do not have mayors**

(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).

## **58 Municipalities with executive committees**

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.

## **59 Delegations of mayoral powers and duties**

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

- (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.

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

- (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.

(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 (ss 60-79)**

#### **Part 1**

#### **Accounting officers (ss 60-76)**

## **60 Municipal managers to be accounting officers**

The municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act, and, as accounting officer, must-

- (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-
  - (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.

#### **61 Fiduciary responsibilities of accounting officers**

(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;
- (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
- (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
- (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*

#### **62 General financial management functions**

(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-

- (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;
- (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;
- (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
- (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;
  - (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.

[Date of commencement of sub-para. (iv): 1 December 2004.]

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

- (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).

### **63 Asset and liability management**

(1) The accounting officer of a municipality is responsible for the management of-

- (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-

- (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
- (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.

### **64 Revenue management**

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

(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;
- (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;
- (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;
  - (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
- (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.

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

## **65 Expenditure management**

(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.

## **66 Expenditure on staff benefits**

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.

#### **67 Funds transferred to organisations and bodies outside government**

(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.

#### **68 Budget preparation**

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.

#### **69 Budget implementation**

(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
- (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.

#### **70 Impending shortfalls, overspending and overdrafts**

(1) The accounting officer of a municipality must report in writing to the municipal council-

- (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.

(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;
- (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.

#### ***Reports and reportable matters***

#### **71 Monthly budget statements**

(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:

- (a) Actual revenue, per revenue source;
- (b) actual borrowings;
- (c) actual expenditure, per vote;
- (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
- (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.
- (2) The statement must include-
  - (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).
- (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.
- (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.
- (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.

[Date of commencement of s. 71: 1 December 2004.]

## **72 Mid-year budget and performance assessment**

- (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-
    - (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;
    - (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

- (b) submit a report on such assessment to-
  - (i) the mayor of the municipality;
  - (ii) the National Treasury; and
  - (iii) the relevant provincial treasury.

(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.

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

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

[Date of commencement of s. 73: 1 July 2005.]

### **74 General reporting obligation**

(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.

(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.

### **75 Information to be placed on websites of municipalities**

(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:

- (a) The annual and adjustments budgets and all budget-related documents;
- (b) all budget-related policies;
- (c) the annual report;
- (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;
- (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;
- (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.

#### **76 Protection of accounting officer**

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 66 of 1995).

### *Part 2*

#### *Financial administration (ss 77-79)*

#### **77 Top management of municipalities**

(1) The top management of a municipality's administration consists of

- (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
- (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.

#### **78 Senior managers and other officials of municipalities**

(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;
- (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;
- (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 timeously submitted to the accounting officer; and
- (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.

#### **79 Delegations**

(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;
- (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
  - (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.
- (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;
  - (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;
  - (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.
- (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 (ss 80-83)

#### **80 Establishment**

- (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.

#### **81 Role of chief financial officer**

- (1) The chief financial officer of a municipality-
  - (a) is administratively in charge of the budget and treasury office;
  - (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;
  - (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.

(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).

## **82 Delegations**

(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-
  - (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.

(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.

(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.

## **83 Competency levels of professional financial officials**

(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.

(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).

[Date of commencement of s. 83: 1 July 2006.]

## **CHAPTER 10**

### **MUNICIPAL ENTITIES (ss 84-109)**

#### *Part 1*

#### *Establishment (s 84)*

## **84 Financial implications for municipalities**

(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;
  - (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;
  - (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-
    - (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
      - (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
    - (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
  - (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.
- (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 (ss 85-92)*

#### **85 Bank accounts**

(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.

(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 94 of 1990);
- (c) otherwise than in the name of the entity; and
- (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;
- (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).

## **86 Bank account details**

(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
- (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.

## **87 Budgets**

(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.

(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 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.

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

(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.

(14) The statement to the accounting officer of the municipality must be in the format of a signed document and in electronic format.

### **88 Mid-year budget and performance assessment**

(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-
  - (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
- (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.

### **89 Remuneration packages**

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:
  - (i) Salaries and wages;
  - (ii) contributions for pensions and medical aid;
  - (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.

### **90 Disposal of capital assets**

(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-

- (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.
- (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.
- (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.
- (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.<sup>ii\*</sup>

#### **91 Financial year**

The financial year of a municipal entity must be the same as that of municipalities.  
[Date of commencement of s. 91: 1 July 2005.]

#### **92 Audit**

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

### **Part 3**

#### **Accounting officers (ss 93-100)**

#### **93 Chief executive officer to be accounting officer**

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.

#### **94 Fiduciary duties of accounting officers**

- (1) The accounting officer of a municipal entity must-
- (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
  - (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.
- (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.

### **95 General financial management functions of accounting officers**

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;
- (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;
- (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
- (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.

### **96 Asset and liability management**

(1) The accounting officer of a municipal entity is responsible for the management of-

- (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 -

- (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.

### **97 Revenue management**

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;
- (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;
- (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;
- (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;
  - (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
- (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.

#### **98 Monthly reconciliation of revenue and accounts**

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
- (b) all accounts of the entity are reconciled each month.

#### **99 Expenditure management**

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

(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;
- (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-
  - (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;
- (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;
- (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
- (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.

#### **100 Budget implementation**

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.

#### **Part 4**

#### **Reports and reportable matters (ss 101-104)**

#### **101 Impending under collection, shortfalls, overspending, overdrafts, and non-payment**

(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-

- (a) any impending or actual-
- (i) under collection of revenue due;
- (ii) shortfalls in budgeted revenue;
- (iii) overspending of the entity's budget;
- (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.

#### **102 Irregular or fruitless and wasteful expenditure**

(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-

- (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.

(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.

#### **103 Reporting of improper interference by councillors**

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

(b) the responsibilities of the board of directors of the municipal entity.

#### **104 General reporting obligations**

(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
- (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.

(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.

#### *Part 5*

#### *Other officials of municipal entities (ss 105-107)*

#### **105 Duties of other officials**

(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-

- (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;
- (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.

(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.

#### **106 Delegation of powers and duties by accounting officers**

(1) The accounting officer of a municipal entity-

- (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
- (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)-

- (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.
- (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.

### **107 Competency levels of professional financial officials**

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.

[Date of commencement of s. 107: 1 July 2006.]

#### *Part 6*

#### *General (ss 108-109)*

### **108 Borrowing of money**

- (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.
- (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.

### **109 Financial problems in municipal entities**

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;
- (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**

### **GOODS AND SERVICES (ss 110-120)**

#### *Part 1*

#### *Supply chain management (ss 110-119)*

### **110 Application of this Part**

- (1) This Part, subject to subsection (2), applies to-
  - (a) the procurement by a municipality or municipal entity of goods and services;
  - (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.

(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;
- (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.

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

[Date of commencement of s. 110: 1 December 2004.]

### **111 Supply chain management policy**

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

[Date of commencement of s. 111: 1 December 2004.]

### **112 Supply chain management policy to comply with prescribed framework**

(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:

- (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;
- (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;
- (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;
  - (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;
- (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;
- (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
  - (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;
- (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
  - (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;
- (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.

[Date of commencement of s. 112: 1 December 2004.]

### **113 Unsolicited bids**

(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.

(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.

[Date of commencement of s. 113: 1 December 2004.]

### **114 Approval of tenders not recommended**

(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.

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

[Date of commencement of s. 114: 1 December 2004.]

### **115 Implementation of system**

(1) The accounting officer of a municipality or municipal entity must-

- (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.
- (2) No person may impede the accounting officer in fulfilling this responsibility.  
[Date of commencement of s. 115: 1 December 2004.]

### **116 Contracts and contract management**

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

- (a) be in writing;
- (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;
  - (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;
- (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-
  - (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-

- (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-
  - (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.

[Date of commencement of s. 116: 1 December 2004.]

### **117 Councillors barred from serving on municipal tender committees**

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.

### **118 Interference**

No person may-

- (a) interfere with the supply chain management system of a municipality or municipal entity; or
- (b) amend or tamper with any tenders, quotations, contracts or bids after their submission.

### **119 Competency levels of officials involved in municipal supply chain management**

(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.

(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.

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

[Date of commencement of s. 119: 1 July 2006.]

## ***Part 2***

### ***Public-private partnerships (s 120)***

### **120 Conditions and process for public-private partnerships**

(1) A municipality may enter into a public-private partnership agreement, but only if the municipality can demonstrate that the agreement will-

- (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.

(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-

- (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-
  - (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
  - (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 1 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.

[Date of commencement of s. 120: 1 December 2004.]

## **CHAPTER 12**

### **FINANCIAL REPORTING AND AUDITING (ss 121-134)**

#### **121 Preparation and adoption of annual reports**

(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);
- (b) the Auditor-General's audit report in terms of section 126 (3) on those financial statements;

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

## **122 Preparation of financial statements**

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

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

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

comply with any requirements as may be prescribed.<sup>iii\*</sup>

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

### **123 Disclosures on intergovernmental and other allocations**

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

(2) The annual financial statements of a municipal entity must disclose information on-

- (a) any allocations received by the entity from any municipality or other organ of state;
- (b) any allocations made by the entity to a municipality or other organ of state; and
- (c) any other information as may be prescribed.

[Date of commencement of s. 123: 1 July 2005.]

### **124 Disclosures concerning councillors, directors and officials**

(1) The notes to the annual financial statements of a municipality must include particulars of-

- (a) the salaries, allowances and benefits of political office-bearers and councillors of the municipality, whether financial or in kind, including a statement by the accounting officer whether or not those salaries, allowances and benefits are within the upper limits of the framework envisaged in section 219 of the Constitution;
- (b) any arrears owed by individual councillors to the municipality, or a municipal entity under its sole or shared control, for rates or services and which at any time during the relevant financial year were outstanding for more than 90 days, including the names of those councillors; and
- (c) the salaries, allowances and benefits of the municipal manager, the chief

financial officer, every senior manager and such categories of other officials as may be prescribed.

(2) The notes to the annual financial statements of a municipal entity must include particulars of the salaries, allowances and benefits of

- (a) the members of the board of directors of the entity; and
- (b) the chief executive officer of the entity, every senior manager and such categories of other officials as may be prescribed.

## **125 Other compulsory disclosures**

(1) The notes to the financial statements of a municipality must include-

- (a) a list of all municipal entities under the sole or shared control of the municipality during the financial year and as at the last day of the financial year.
- (b) the total amount of contributions to organised local government for the financial year, and the amount of any contributions outstanding as at the end of the financial year; and
- (c) the total amounts paid in audit fees, taxes, levies, duties and pension and medical aid contributions, and whether any amounts were outstanding as at the end of the financial year.

(2) The notes to the annual financial statements of a municipality or municipal entity must disclose the following information:

- (a) In respect of each bank account held by the municipality or entity during the relevant financial year-
  - (i) the name of the bank where the account is or was held, and the type of account; and
  - (ii) year opening and year end balances in each of these bank accounts;
- (b) a summary of all investments of the municipality or entity as at the end of the financial year;
- (c) particulars of any contingent liabilities of the municipality or entity as at the end of the financial year;
- (d) particulars of-
  - (i) any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a municipality, any material unauthorised expenditure, that occurred during the financial year, and whether these are recoverable;
  - (ii) any criminal or disciplinary steps taken as a result of such losses or such unauthorised, irregular or fruitless and wasteful expenditures; and
  - (iii) any material losses recovered or written off;
- (e) particulars of non-compliance with this Act; and
- (f) any other matters that may be prescribed.

## **126 Submission and auditing of annual financial statements**

(1) The accounting officer of a municipality-

- (a) must prepare the annual financial statements of the municipality and, within two months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General for auditing; and
- (b) must in addition, in the case of a municipality referred to in section 122 (2), prepare consolidated annual financial statements in terms of that section and, within three months after the end of the financial year to which those

statements relate, submit the statements to the Auditor-General for auditing.

(2) The accounting officer of a municipal entity must prepare the annual financial statements of the entity and, within two months after the end of the financial year to which those statements relate, submit the statements to-

- (a) the parent municipality of the entity; and
- (b) the Auditor-General, for auditing.

(3) The Auditor-General must-

- (a) audit those financial statements; and
- (b) submit an audit report on those statements to the accounting officer of the municipality or entity within three months of receipt of the statements.

(4) If the Auditor-General is unable to complete an audit within three months of receiving the financial statements from an accounting officer, the Auditor-General must promptly submit a report outlining the reasons for the delay to the relevant municipality or municipal entity and to the relevant provincial legislature and Parliament.

(5) Once the Auditor-General has submitted an audit report to the accounting officer, no person other than the Auditor-General may alter the audit report or the financial statements to which the audit report relates.

[Date of commencement of s. 126: 1 July 2005.]

### **127 Submission and tabling of annual reports**

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

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

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

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

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

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

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

- (a) in accordance with section 21A of the Municipal Systems Act-

- (i) make public the annual report; and
- (ii) invite the local community to submit representations in connection with the annual report; and
- (b) submit the annual report to the Auditor-General, the relevant provincial treasury and the provincial department responsible for local government in the province.

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

[Date of commencement of s. 127: 1 July 2005.]

### **128 Compliance to be monitored**

The accounting officer of a parent municipality must-

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

[Date of commencement of s. 128: 1 July 2005.]

### **129 Oversight reports on annual reports**

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

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

(2) The accounting officer must-

- (a) attend council and council committee meetings where the annual report is discussed, for the purpose of responding to questions concerning the report; and
- (b) submit copies of the minutes of those meetings to the Auditor-General, the relevant provincial treasury and the provincial department responsible for local government in the province.

(3) The accounting officer must in accordance with section 21A of the Municipal Systems Act make public an oversight report referred to in subsection (1) within seven days of its adoption.

(4) The National Treasury may issue guidelines on-

- (a) the manner in which municipal councils should consider annual reports and conduct public hearings; and
- (b) the functioning and composition of any public accounts or oversight committees established by the council to assist it to consider an annual report.

(5) No guidelines issued in terms of subsection (4) are binding on a municipal council unless adopted by the council.

(6) This section, with the necessary modifications as the context may require, is also applicable if only components of the annual report were tabled in terms of section 127 (3).

[Date of commencement of s. 129: 1 July 2005.]

### **130 Council meetings open to public and certain public officials**

(1) The meetings of a municipal council at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, must be open to the public and any organs of state, and a reasonable time must be allowed-

- (a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and
- (b) for members of the local community or any organs of state to address the council.

(2) Representatives of the Auditor-General are entitled to attend, and to speak at, any council meeting referred to in subsection (1).

(3) This section, with the necessary modifications as the context may require, is also applicable if only components of the annual report were tabled in terms of section 127 (3).

[Date of commencement of s. 130: 1 July 2005.]

### **131 Issues raised by Auditor-General in audit reports**

(1) A municipality must address any issues raised by the Auditor-General in an audit report. The mayor of a municipality must ensure compliance by the municipality with this subsection.

(2) The MEC for local government in the province must-

- (a) assess all annual financial statements of municipalities in the province, the audit reports on such statements and any responses of municipalities to such audit reports, and determine whether municipalities have adequately addressed any issues raised by the Auditor-General in audit reports; and
- (b) report to the provincial legislature any omission by a municipality to adequately address those issues within 60 days.

[Date of commencement of s. 131: 1 July 2005.]

### **132 Submissions to provincial legislatures**

(1) The following documents must be submitted to the provincial legislature:

- (a) The annual report of each municipality and each municipal entity in the province, or if only components of an annual report were tabled in terms of section 127 (3), those components; and
- (b) all oversight reports on those annual reports adopted in terms of section 129 (1).

(2) The accounting officer of a municipality must submit the documents referred to in subsection (1) (a) and (b) to the provincial legislature within seven days after the municipal council has adopted the relevant oversight report in terms of section 129 (1).

(3) The MEC for local government in a province must monitor whether municipalities in the province comply with subsection (2).

(4) A provincial legislature may deal with the documents referred to it in terms of subsection (1) in accordance with its constitutional powers.

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

[Date of commencement of s. 132: 1 July 2005.]

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

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

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

[Date of commencement of s. 133: 1 July 2005.]

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

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

[Date of commencement of s. 134: 1 July 2005.]

## **CHAPTER 13**

### **RESOLUTION OF FINANCIAL PROBLEMS (ss 135-162)**

[Date of commencement of Chapter 13: 1 July 2005.]

#### ***Part 1***

*Identification of financial problems (s 135)*

**135 Primary responsibility for resolution of financial problems**

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

(2) A municipality must meet its financial commitments.

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

(a) seek solutions for the problem;

(b) notify the MEC for local government and the MEC for finance in the province; and

(c) notify organised local government.

[Date of commencement of s. 135: 1 July 2005.]

*Part 2*

*Provincial interventions (ss 136-150)*

**136 Types of provincial interventions**

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

(a) consult the mayor of the municipality to determine the facts;

(b) assess the seriousness of the situation and the municipality's response to the situation; and

(c) determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution.

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

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

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

[Date of commencement of s. 136: 1 July 2005.]

**137 Discretionary provincial interventions**

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

(a) assessing the seriousness of the financial problem in the municipality;

(b) seeking solutions to resolve the financial problem in a way that would be sustainable and would build the municipality's capacity to manage its own financial affairs;

- (c) determining whether the financial problem, singly or in combination with other problems, is sufficiently serious or sustained that the municipality would benefit from a financial recovery plan and, if so, requesting any suitably qualified person-
  - (i) to prepare an appropriate financial recovery plan for the municipality;
  - (ii) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and
  - (iii) to submit the recovery plan and any recommendations referred to in subparagraphs (i) and (ii) to the MEC for local government in the province within a period determined by the MEC; and
- (d) consulting the mayor of the municipality to obtain the municipality's co-operation in resolving the financial problem, and if applicable, implementing the financial recovery plan.

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

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

[Date of commencement of s. 137: 1 July 2005.]

### **138 Criteria for determining serious financial problems**

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

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

[Date of commencement of s. 138: 1 July 2005.]

### **139 Mandatory provincial interventions arising from financial crises**

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

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

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

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

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

[Date of commencement of s. 139: 1 July 2005.]

#### **140 Criteria for determining serious or persistent material breach of financial commitments**

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

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

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

municipalities.

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

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

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

[Date of commencement of s. 140: 1 July 2005.]

#### **141 Preparation of financial recovery plans**

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

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

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

- (a) consult-
  - (i) the relevant municipality;
  - (ii) the municipality's principal suppliers and creditors, to the extent they can reasonably be contacted;
  - (iii) the MEC for finance and the MEC for local government in the province; and
  - (iv) organised labour;
- (b) take into account-
  - (i) any financial recovery plan that has previously been prepared for the municipality; and
  - (ii) any proposed financial recovery plan, or proposals for a financial recovery plan, that may be advanced by the municipality or any creditor of the municipality; and
- (c) at least 14 days before finalising the plan-
  - (i) submit the plan for comment to-
    - (aa) the municipality;
    - (bb) the MEC for finance and the MEC for local government in the province;
    - (cc) organised local government in the province;
    - (dd) organised labour; and
    - (ee) any supplier or creditor of the municipality, on request; and
  - (ii) publish a notice in a newspaper of general circulation in the municipality-
    - (aa) stating the place, including any website address, where copies of the plan will be available to the public free of charge or at a reasonable price; and
    - (bb) inviting the local community to submit written comments in respect of the plan.

(4) The person charged with preparing the financial recovery plan or the Municipal

Financial Recovery Service must-

- (a) consider any comments received pursuant to subsection (3) (c);
- (b) finalise the financial recovery plan; and
- (c) submit the final plan to the MEC for finance in the province for approval in terms of section 143.

[Date of commencement of s. 141: 1 July 2005.]

#### **142 Criteria for financial recovery plans**

(1) A financial recovery plan must be aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, and such a plan, whether for a mandatory or discretionary intervention-

- (a) must-
  - (i) identify the financial problems of the municipality;
  - (ii) be designed to place the municipality in a sound and sustainable financial condition as soon as possible;
  - (iii) state the principal strategic objectives of the plan, and ways and means for achieving those objectives;
  - (iv) set out a specific strategy for addressing the municipality's financial problems, including a strategy for reducing unnecessary expenditure and increasing the collection of revenue, as may be necessary;
  - (v) identify the human and financial resources needed to assist in resolving financial problems, and where those resources are proposed to come from;
  - (vi) describe the anticipated time frame for financial recovery, and milestones to be achieved; and
  - (vii) identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the municipality and actions to be taken by other parties; and
- (b) may-
  - (i) provide for the liquidation of specific assets, excluding those needed for the provision of the minimum level of basic municipal services;
  - (ii) provide for debt restructuring or debt relief in accordance with Part 3 of this Chapter;
  - (iii) provide for special measures to prevent unauthorised, irregular and fruitless and wasteful expenditures and other losses; and
  - (iv) identify any actual and potential revenue sources.

(2) In addition, a financial recovery plan-

- (a) for a mandatory intervention must-
  - (i) set spending limits and revenue targets;
  - (ii) provide budget parameters which bind the municipality for a specified period or until stated conditions have been met; and
  - (iii) identify specific revenue-raising measures that are necessary for financial recovery, including the rate at which any municipal tax and tariffs must be set to achieve financial recovery; and
- (b) for a discretionary intervention may suggest for adoption by the municipality-
  - (i) spending limits and revenue targets;
  - (ii) budget parameters for a specified period or until stated conditions have been met; and

- (iii) specific revenue-raising measures that are necessary for financial recovery.

[Date of commencement of s. 142: 1 July 2005.]

#### **143 Approval of financial recovery plans**

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

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

- (a) if so, approve the recovery plan; or
- (b) if not, direct what defects must be rectified.

(3) The responsible MEC must submit an approved recovery plan to-

- (a) the municipality;
- (b) the Minister and the Cabinet member responsible for local government;
- (c) the Auditor-General; and
- (d) organised local government in the province.

[Date of commencement of s. 143: 1 July 2005.]

#### **144 Amendment of financial recovery plans**

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

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

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

[Date of commencement of s. 144: 1 July 2005.]

#### **145 Implementation of financial recovery plans in discretionary provincial interventions**

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

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

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

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

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

[Date of commencement of s. 145: 1 July 2005.]

#### **146 Implementation of financial recovery plans in mandatory provincial interventions**

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

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

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

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

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

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

[Date of commencement of s. 146: 1 July 2005.]

#### **147 Regular review of provincial interventions**

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

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

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

[Date of commencement of s. 147: 1 July 2005.]

#### **148 Termination of provincial interventions**

- (1) A discretionary intervention referred to in section 137 must end-
  - (a) if it is terminated in terms of section 139 (2) (b) of the Constitution; or
  - (b) when-
    - (i) the municipality is able and willing to fulfil the executive obligation in terms of legislation or the Constitution that gave rise to the intervention; and
    - (ii) the financial problem that has been caused by or has caused the failure by the municipality to comply with that obligation is resolved.
- (2) A mandatory intervention referred to in section 139 must end when-
  - (a) the crisis in the municipality's financial affairs has been resolved; and
  - (b) the municipality's ability to meet its obligations to provide basic services or its financial commitments is secured.
- (3) When a provincial intervention ends, the MEC for local government or the MEC for finance in the province must notify-
  - (a) the municipality;
  - (b) the Minister, in the case of a mandatory intervention;
  - (c) the Cabinet member responsible for local government;
  - (d) any creditors having pending litigation against the municipality;
  - (e) the provincial legislature; and
  - (f) organised local government in the province.

[Date of commencement of s. 148: 1 July 2005.]

#### **149 Access to information, records and documents of municipalities**

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

[Date of commencement of s. 149: 1 July 2005.]

#### **150 National interventions**

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

[Date of commencement of s. 150: 1 July 2005.]

**Part 3**

***Debt relief and restructuring (ss 151-156)***

**151 Legal rights**

Except as expressly provided for in this Part, nothing in this Chapter limits or affects-

- (a) the rights of any creditor or other person having a claim against a municipality;
- (b) any person's access to ordinary legal process in accordance with the common law and relevant legislation; or
- (c) the rights of a municipality or municipal entity, or of the parties to a contract with a municipality or municipal entity, to alternative dispute resolution mechanisms, notice procedures and other remedies, processes or procedures.

[Date of commencement of s. 151: 1 July 2005.]

**152 Application for stay of legal proceedings**

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

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

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

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

[Date of commencement of s. 152: 1 July 2005.]

**153 Application for extraordinary relief**

(1) A municipality may apply to the High Court for an order-

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

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

- (a) the provincial executive has intervened in terms of section 139 and a financial recovery plan to restore the municipality to financial health has been approved for the municipality;
- (b) the financial recovery plan is likely to fail without the protection of such an

- order;
- (c) section 154 has been complied with, in the case of an application for an order referred to in subsection (1) (b); and
  - (d) section 155 (1) has been complied with, in the case of an application for an order referred to in subsection (1) (c).
- (3) Notice of an application in terms of subsection (1) must be given to-
- (a) all creditors to whom the municipality owes an amount in excess of a prescribed amount, or if no amount is prescribed, in excess of R100 000, in so far as those creditors can reasonably be contacted;
  - (b) the MEC for finance and the MEC for local government in the province;
  - (c) the Minister;
  - (d) the Cabinet member responsible for local government; and
  - (e) organised labour.

[Date of commencement of s. 153: 1 July 2005.]

#### **154 Suspension of financial obligations**

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

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

[Date of commencement of s. 154: 1 July 2005.]

#### **155 Termination of financial obligations and settlement of claims**

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

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

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

(3) A distribution scheme must-

- (a) determine the amount available for distribution;
- (b) list all creditors with claims which qualify for the purposes of the distribution scheme, indicating which of those are secured and the manner in which they are secured; and
- (c) provide for the distribution of the amount available amongst creditors in the following order of preference:

- (i) First preference must be given to the rights of secured creditors as to the assets with which they are secured in terms of section 48, provided the security in question was given in good faith and at least six months before the mandatory provincial intervention in terms of section 139 began;
  - (ii) thereafter the preferences provided for in the Insolvency Act, 1936 (Act 24 of 1936), read with the necessary changes as the context may require, must be applied; and
  - (iii) thereafter non-preferent claims must be settled in proportion to the amount of the different claims.
- (4) A distribution scheme may not be implemented unless approved by the court.  
[Date of commencement of s. 155: 1 July 2005.]

### **156 Matters to be prescribed**

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

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

[Date of commencement of s. 156: 1 July 2005.]

### **Part 4**

### ***Municipal Financial Recovery Service (ss 157-162)***

#### **157 Establishment**

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

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

[Date of commencement of s. 157: 1 July 2005.]

#### **158 Functions and powers**

The Municipal Financial Recovery Service-

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

practices in resolving such problems.

[Date of commencement of s. 158: 1 July 2005.]

#### **159 Appointment of Head**

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

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

[Date of commencement of s. 159: 1 July 2005.]

#### **160 Responsibilities of Head**

(1) The Head of the Service-

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

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

[Date of commencement of s. 160: 1 July 2005.]

#### **161 Staff**

The staff of the Municipal Financial Recovery Service consists of-

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

[Date of commencement of s. 161: 1 July 2005.]

#### **162 Delegations**

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

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

- (a) must be in writing;
- (b) is subject to the limitations or conditions which the Head of the Service may impose; and
- (c) does not divest the Head of the Service of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

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

[Date of commencement of s. 162: 1 July 2005.]

### **CHAPTER 14**

#### **GENERAL TREASURY MATTERS (ss 163-170)**

#### **163 Liabilities and risks payable in foreign currencies**

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

- (2) Subsection (1) does not apply-
- (a) to debt regulated in terms of section 47; or
  - (b) to the procurement of goods or services denominated in a foreign currency but the Rand value of which is determined at the time of procurement, or where this is not possible and risk is low, at the time of payment

#### **164 Forbidden activities**

- (1) No municipality or municipal entity may-
- (a) conduct any commercial activities-
    - (i) otherwise than in the exercise of the powers and functions assigned to it in terms of the Constitution or national or provincial legislation; or
    - (ii) outside the borders of the Republic;
  - (b) provide a municipal service in an area outside its jurisdiction except with the approval of the council of the municipality having jurisdiction in that area; or
  - (c) make loans to-
    - (i) councillors or officials of the municipality;
    - (ii) directors or officials of the entity; or
    - (iii) members of the public.

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

#### **165 Internal audit unit**

- (1) Each municipality and each municipal entity must have an internal audit unit, subject to subsection (3).
- (2) The internal audit unit of a municipality or municipal entity must-
- (a) prepare a risk-based audit plan and an internal audit program for each financial year;
  - (b) advise the accounting officer and report to the audit committee on the implementation of the internal audit plan and matters relating to-
    - (i) internal audit;
    - (ii) internal controls;
    - (iii) accounting procedures and practices;
    - (iv) risk and risk management;
    - (v) performance management;
    - (vi) loss control; and
    - (vii) compliance with this Act, the annual Division of Revenue Act and any other applicable legislation; and
  - (c) perform such other duties as may be assigned to it by the accounting officer.
- (3) The internal audit function referred to in subsection (2) may be outsourced if the municipality or municipal entity requires assistance to develop its internal capacity and the council of the municipality or the board of directors of the entity has determined that this is feasible or cost-effective.

#### **166 Audit committees**

- (1) Each municipality and each municipal entity must have an audit committee, subject to subsection (6).
- (2) An audit committee is an independent advisory body which must-

- (a) advise the municipal council, the political office-bearers, the accounting officer and the management staff of the municipality, or the board of directors, the accounting officer and the management staff of the municipal entity, on matters relating to-
    - (i) internal financial control and internal audits;
    - (ii) risk management;
    - (iii) accounting policies;
    - (iv) the adequacy, reliability and accuracy of financial reporting and information;
    - (v) performance management;
    - (vi) effective governance;
    - (vii) compliance with this Act, the annual Division of Revenue Act and any other applicable legislation;
    - (viii) performance evaluation; and
    - (ix) any other issues referred to it by the municipality or municipal entity;
  - (b) review the annual financial statements to provide the council of the municipality or, in the case of a municipal entity, the council of the parent municipality and the board of directors of the entity, with an authoritative and credible view of the financial position of the municipality or municipal entity, its efficiency and effectiveness and its overall level of compliance with this Act, the annual Division of Revenue Act and any other applicable legislation;
  - (c) respond to the council on any issues raised by the Auditor-General in the audit report;
  - (d) carry out such investigations into the financial affairs of the municipality or municipal entity as the council of the municipality, or in the case of a municipal entity, the council of the parent municipality or the board of directors of the entity, may request; and
  - (e) perform such other functions as may be prescribed.
- (3) In performing its functions, an audit committee-
- (a) has access to the financial records and other relevant information of the municipality or municipal entity; and
  - (b) must liaise with-
    - (i) the internal audit unit of the municipality; and
    - (ii) the person designated by the Auditor-General to audit the financial statements of the municipality or municipal entity.
- (4) An audit committee must-
- (a) consist of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be; and
  - (b) meet as often as is required to perform its functions, but at least four times a year.
- (5) The members of an audit committee must be appointed by the council of the municipality or, in the case of a municipal entity, by the council of the parent municipality. One of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee.
- (6) A single audit committee may be established for-

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

### **167 Councillors' remuneration**

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

- (a) within the framework of the Public Office-Bearers Act, 1998 (Act 20 of 1998), setting the upper limits of the salaries, allowances and benefits for those political office-bearers and members; and
- (b) in accordance with section 219 (4) of the Constitution.

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

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

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

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

### **168 Treasury regulations and guidelines**

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

- (a) any matter that may be prescribed in terms of this Act;
- (b) financial management and internal control;
- (c) a framework for regulating the exercise of municipal tariff-fixing powers; [Para. (c) substituted by s. 13 of Act 12 of 2007.]
- (d) a framework regulating the financial commitments of municipalities and municipal entities in terms of public-private partnership agreements;
- (e) the establishment by municipalities of, and control over-
  - (i) municipal entities; and
  - (ii) business units contemplated in section 76 (a) (ii) of the Municipal Systems Act;
- (f) the safe-guarding of the financial affairs of municipalities and of municipal entities when assets, liabilities or staff are transferred from or to a municipality or a municipal entity;
- (g) the alienation, letting or disposal of assets by municipalities or municipal entities;
- (h) internal audit units and their functioning;
- (i) the information to be disclosed when municipalities or municipal entities issue or incur debt and the manner in which such information must be disclosed, including by way of a prospectus or other document;
- (j) the circumstances under which further or specific disclosures are required after money has been borrowed by a municipality or municipal entity;
- (k) the circumstances under which documentation or information pertaining to

- municipal debt must be lodged or registered;
  - (l) the establishment of a registry for the registration of documentation and information pertaining to municipal borrowing;
  - (m) the settlement of claims against a municipality following an order of court in terms of section 153;
  - (n) the information that must be placed on the websites of municipalities;
  - (o) a framework regulating investments by municipal entities; and
  - (p) any other matter that may facilitate the enforcement and administration of this Act.
- (2) A regulation or guideline in terms of this section may-
- (a) differentiate between different-
    - (i) kinds of municipalities, which may, for the purposes of this section, be defined either in relation to categories, types or budgetary size of municipalities or in any other manner;
    - (ii) categories of municipal entities;
    - (iii) categories of accounting officers; or
    - (iv) categories of officials; or
  - (b) be limited in its application to a particular-
    - (i) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of municipality or in any other manner;
    - (ii) category of municipal entities;
    - (iii) category of accounting officers; or
    - (iv) category of officials.
- (3) No guidelines issued in terms of subsection (1) are binding on-
- (a) a municipality unless adopted by its council; or
  - (b) a municipal entity unless adopted by the council of the entity's parent municipality.

### **169 Consultative processes before promulgation of regulations**

- (1) Before regulations in terms of section 168 are promulgated, the Minister must-
- (a) consult organised local government on the substance of those regulations; and
  - (b) publish the draft regulations in the *Government Gazette* for public comment.

(2) Regulations made in terms of section 168 must be submitted to Parliament for parliamentary scrutiny at least 30 days before their promulgation.

### **170 Departures from treasury regulations or conditions**

(1) The National Treasury may on good grounds approve a departure from a treasury regulation or from any condition imposed in terms of this Act.

(2) Non-compliance with a regulation made in terms of section 168, or with a condition imposed by the National Treasury in terms of this Act, may on good grounds shown be condoned by the Treasury.

## **CHAPTER 15**

### **FINANCIAL MISCONDUCT (ss 171-175)**

#### *Part 1*

#### *Disciplinary proceedings (ss 171-172)*

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

- (1) The accounting officer of a municipality commits an act of financial misconduct

if that accounting officer deliberately or negligently-

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;
- (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of a requirement of this Act must be-
  - (i) submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state; or
  - (ii) made public.

(2) The chief financial officer of a municipality commits an act of financial misconduct if that officer deliberately or negligently-

- (a) fails to carry out a duty delegated to that officer in terms of section 79 or 81 (1) (e);
- (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81 (1) (e);
- (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1) (d).

(3) A senior manager or other official of a municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently-

- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1) (d).

(4) A municipality must-

- (a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act.

## **172 Financial misconduct by officials of municipal entities**

(1) The accounting officer of a municipal entity commits an act of financial misconduct if that accounting officer deliberately or negligently-

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipal entity;
- (c) makes or permits, or instructs another official of the municipal entity to make, an irregular or fruitless and wasteful expenditure; or

- (d) provides incorrect or misleading information in any document which in terms of this Act must be-
  - (i) submitted to the entity's board of directors or parent municipality or to the Auditor-General; or
  - (ii) made public.

(2) A senior manager or other official of a municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 106, commits an act of financial misconduct if that senior manager or official deliberately or negligently-

- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1) (d).

(3) A municipal entity must-

- (a) investigate allegations of financial misconduct against the accounting officer, a senior manager or other official of the entity unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, senior manager or official in terms of Schedule 3 of the Municipal Systems Act.

## *Part 2*

### *Criminal proceedings (ss 173-174)*

#### **173 Offences**

(1) The accounting officer of a municipality is guilty of an offence if that accounting officer-

- (a) deliberately or in a grossly negligent way-
  - (i) contravenes or fails to comply with a provision of section 61 (2) (b), 62 (1), 63 (2) (a) or (c), 64 (2) (a) or (d) or 65 (2) (a), (b), (c), (d), (f) or (i);
  - (ii) fails to take reasonable steps to implement the municipality's supply chain management policy referred to in section 111;
  - (iii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
  - (iv) fails to take all reasonable steps to prevent corruptive practices-
    - (aa) in the management of the municipality's assets or receipt of money; or
    - (bb) in the implementation of the municipality's supply chain management policy;
- (b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the municipality or on money received or spent by the municipality; or
- (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be-
  - (aa) submitted to the Auditor-General, the National Treasury or any other organ of state; or

(bb) made public.

(2) The accounting officer of a municipal entity is guilty of an offence if that accounting officer-

- (a) deliberately or in a grossly negligent way-
  - (i) contravenes or fails to comply with a provision of section 94 (2) (b), 95 (1), 96 (2), 97 (a) or 99 (2) (a), (c) or (e);
  - (ii) fails to take all reasonable steps to prevent irregular or fruitless and wasteful expenditure; or
  - (iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity's assets, receipt of money or supply chain management system;
- (b) deliberately misleads or withholds information from the Auditor-General or the entity's parent municipality on any bank accounts of the municipal entity or on money received or spent by the entity; or
- (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be-
  - (aa) submitted to the entity's parent municipality, the Auditor-General, the National Treasury or any other organ of state; or
  - (bb) made public.

(3) A senior manager or other official of a municipality or municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 or 106, is guilty of an offence if that senior manager or official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation.

- (4) A councillor of a municipality is guilty of an offence if that councillor-
- (a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act;
  - (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of this Act;
  - (c) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or
  - (d) interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.

(5) A councillor, an official of a municipality or municipal entity, a member of the board of directors of a municipal entity or any other person is guilty of an offence if that person deliberately or in a grossly negligent way-

- (a) impedes an accounting officer from complying with a provision of this Act;
- (b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a municipality or municipal entity;
- (c) makes a withdrawal in contravention of section 11;
- (d) fails to comply with section 49;
- (e) contravenes a provision of section 115 (2), 118 or 126 (5); or
- (f) provides false or misleading information for the purposes of any document

- which must in terms of a requirement of this Act be-
- (i) submitted to the council, mayor or accounting officer of a municipality or to the Auditor-General or the National Treasury; or
  - (ii) made public.

#### **174 Penalties**

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

### ***Part 3***

#### ***General (s 175)***

#### **175 Regulations on financial misconduct procedures and criminal proceedings**

(1) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may make regulations prescribing-

- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the MEC for local government in the province and the Auditor-General, including-
    - (i) particulars of the alleged financial misconduct; and
    - (ii) steps taken in connection with such financial misconduct;
  - (b) matters relating to internal investigations by municipalities and municipal entities of allegations of financial misconduct;
  - (c) the circumstances in which the National Treasury or the MEC for local government in the province may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;
  - (d) criteria for the composition and functioning of a disciplinary board which hears a charge of financial misconduct;
  - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the MEC for local government in the province and the Auditor-General; and
  - (f) any other matters to the extent necessary to enforce the provisions of this Act.
- (2) A regulation in terms of subsection (1) may-
- (a) differentiate between different-
    - (i) kinds of municipalities, which may, for the purposes of this section, be defined either in relation to categories, types or budgetary size of municipalities or in any other manner;
    - (ii) categories of municipal entities;
    - (iii) categories of accounting officers; or
    - (iv) categories of other officials; or
  - (b) be limited in its application to a particular-
    - (i) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of municipality or in any other manner;
    - (ii) category of municipal entities;
    - (iii) category of accounting officers; or
    - (iv) category of other officials.

### **CHAPTER 16**

#### **MISCELLANEOUS (ss 176-180)**

### **176 Liability of functionaries exercising powers and functions in terms of this Act**

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

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

### **177 Delays and exemptions**

(1) The Minister may by notice in the *Gazette*-

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

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

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

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

### **178 Transitional provisions**

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

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

- (a) all corporate entities in which the municipality or a municipal entity under its sole or shared control has an interest, specifying-
  - (i) the name and address of the corporate entity;
  - (ii) the purpose, extent and other particulars of the interest;
  - (iii) if such corporate entity is a municipal entity, whether the entity is

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

### 179 Repeal and amendment of legislation

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

(2) Despite the repeal of section 10G of the Local Government Transition Act, 1993 (Act 209 of 1993), by subsection (1) of this section, the provisions contained in subsections (6), (6A) and (7) of section 10G remain in force until the legislation envisaged in section 229 (2) (b) of the Constitution is enacted.

(3) The repeal of the Municipal Accountants Act, 1988 (Act 21 of 1988), takes effect on a date determined by the Minister by notice in the *Gazette*.

[Date of commencement of s. 179: 1 July 2005.]

### 180 Short title and commencement

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

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

### Schedule

### REPEAL AND AMENDMENT OF LEGISLATION

(Section 179)

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

<sup>i</sup>Municipalities and municipal entities conditionally exempted from the provisions of s. 14 - see GN 305 in *GG* 29781 of 5 April 2007

<sup>ii</sup>Municipalities and municipal entities conditionally exempted from the provisions of s. 90 - see GN 305 in *GG* 29781 of 5 April 2007

<sup>iii</sup>Municipalities and municipal entities conditionally exempted from the provisions of s. 122 (2) and (3) - see GN 522 in *GG* 30013 of 29 June 2007

<sup>iv</sup>Municipalities and municipal entities conditionally exempted from the provisions of s. 122 (2) and (3) - see GN 522 in *GG* 30013 of 29 June 2007