

**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT
NO. 56 OF 2003**

[\[View Regulation\]](#)

[ASSENTED TO 9 FEBRUARY, 2004]
[DATE OF COMMENCEMENT: 1 JULY, 2004]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to <i>Government Gazette</i> 30271 dated 7 September, 2007.

as amended by

Municipal Fiscal Powers and Functions Act, [No. 12 of 2007](#)

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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BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1
INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF ACT

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 No. 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 No. 20 of 1998](#)); or
- (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in 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 No. 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 No. 117 of 1998](#));

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 ([Act No. 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 No. 52 of 1997](#)), to represent local government nationally or provincially;

"overspending"—

- (a) in relation to the budget of a municipality, means causing the operational or capital expenditure incurred by the municipality during a financial year to exceed the total amount appropriated in that year's budget for its operational or capital expenditure, as the case may be;
- (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 No. 61 of 1973](#));

"provincial department" means a department listed in [Schedule 2](#) of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), which falls within a provincial administration listed in Schedule 1 to that Act;

"provincial treasury" means a treasury established in terms of [section 17](#) of the Public Finance Management Act;

"Public Finance Management Act" means the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#));

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

- (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.

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 No. 97 of 1997](#)), the annual Division of Revenue Act and the Public Finance Management Act; and
- (c) enforce compliance with the measures established in terms of [section 216 \(1\) of the Constitution](#), including those established in terms of this Act.

(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

Part 1: Municipal bank accounts

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 No. 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 pre-scribed.

(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

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.

CHAPTER 4 MUNICIPAL BUDGETS

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 No. 12 of 2007](#).]

Wording of Sections

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 No. 12 of 2007](#).]

Wording of Sections

(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 No. 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.

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

(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

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.

(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 No. 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: 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 No. 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

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

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

Part 1: Accounting officers

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 No. 66 of 1995](#)).

Part 2: Financial administration

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

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

Part 1: Establishment

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;
- (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

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 No. 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.

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

(Date of commencement: 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

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

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

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: 1 July, 2006.)

Part 6: General

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

Part 1: Supply chain management

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: 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

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

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.

(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.

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.

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: 1 July, 2005.)

[CHAPTER 13](#)

RESOLUTION OF FINANCIAL PROBLEMS

Part 1: Identification of financial problems

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

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: 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

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 No. 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

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

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 No. 20 of 1998](#)), setting the upper limits of the salaries, allowances and benefits for those political office-bearers and members; and
- (b) in accordance with [section 219 \(4\)](#) of [the Constitution](#).

(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 No. 12 of 2007](#).]

Wording of Sections

- (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

Part 1: Disciplinary proceedings

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

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

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

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.

[General Note: Delays and exemptions have been published under Government Notice No. 773 in *Government Gazette* 26511 of 1 July, 2004.]

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 No. 209 of 1993), by [subsection \(1\)](#) of this section, the provisions contained in subsections (6), (6A) and (7) of section 10G remain in force until the legislation envisaged in [section 229 \(2\) \(b\)](#) of [the Constitution](#) is enacted.

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

(Date of commencement of [s. 179](#) and date of repeal of the Municipal Accountants Act, No. 21 of 1988: 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.

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/Sections</i>	<i>Government Notice No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
1 July, 2004	The whole Act, unless otherwise indicated	772	26510	25 June, 2004
1 December, 2004	Ss. 62 (1) (f) (iv), 71, 110-116 and 120	772	26510	25 June, 2004
1 April, 2005	Ss. 9 and 38-42	772	26510	25 June, 2004
1 July, 2005	Ss. 5 (3), (4), (8), 28, 34 (3), 73, 91, 123, 126-134, Chapter 13 and s. 179	772	26510	25 June, 2004
1 July, 2006	Ss. 83, 107 and 119	772	26510	25 June, 2004
1 July, 2008	S. 45 (4) (a)	772	26510	25 June, 2004

Schedule

REPEAL AND AMENDMENT OF LEGISLATION

[\(Section 179\)](#)

<i>No. and year of Act</i>	<i>Short title of Act</i>	<i>Extent of repeal or amendment</i>
Act No. 91 of 1983	Promotion of Local Government Affairs Act, 1983	Repeals section 17D .

Act No. 21 of 1988	Municipal Accountants Act, 1988	<i>Repeals the whole.</i>
Act No. 209 of 1993	Local Government Transition Act, 1993	<i>Repeals section 10G.</i>

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000

[\[View Regulation\]](#)

[ASSENTED TO 14 NOVEMBER, 2000]
[DATE OF COMMENCEMENT: 1 MARCH, 2001]

(Unless otherwise indicated)

(English text signed by the Acting President)

This Act has been updated to <i>Government Gazette</i> 34433 dated 5 July, 2011.
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as amended by

Institution of Legal Proceedings against certain Organs of State Act, [No. 40 of 2002](#)
[with effect from 28 November, 2002]

Local Government Laws Amendment Act, [No. 51 of 2002](#)

Local Government: Municipal Systems Amendment Act, [No. 44 of 2003](#)

Local Government: Municipal Property Rates Act, [No. 6 of 2004](#)

Municipal Fiscal Powers and Functions Act, [No. 12 of 2007](#)

Local Government Laws Amendment Act, [No. 19 of 2008](#)

Local Government: Municipal Systems Amendment Act, [No. 7 of 2011](#)

ACT

To provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all; to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for the manner in which municipal powers and functions are exercised and performed to provide for community participation; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government; to provide a framework for local public administration and human resource development; to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts; to provide for credit control and debt collection; to establish a framework for support, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment; to provide for legal matters pertaining to local government; and to provide for matters incidental thereto.

Preamble.—WHEREAS the system of local government under apartheid failed dismally to meet the basic needs of the majority of South Africans;

WHEREAS [the Constitution](#) of our non-racial democracy enjoins local government not just to seek to provide services to all our people but to be fundamentally developmental in orientation;

WHEREAS there is a need to set out the core principles, mechanisms and processes that give meaning to developmental local government and to empower municipalities to move progressively towards the social and economic upliftment of communities and the provision of basic services to all our people, and specifically the poor and the disadvantaged;

WHEREAS a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management;

WHEREAS the new system of local government requires an efficient, effective and transparent local public administration that conforms to constitutional principles;

WHEREAS there is a need to ensure financially and economically viable municipalities;

WHEREAS there is a need to create a more harmonious relationship between municipal councils, municipal administrations and the local communities through the acknowledgement of reciprocal rights and duties;

WHEREAS there is a need to develop a strong system of local government capable of exercising the functions and powers assigned to it; and

WHEREAS this Act is an integral part of a suite of legislation that gives effect to the new system of local government;

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- [5A.](#) Declaration of interests
- [6.](#) Unauthorised disclosure of information
- [7.](#) Undue influence
- [8.](#) Rewards, gifts and favours
- [9.](#) Council property
- [10.](#) Payment of arrears
- [11.](#) Participation in elections
- [12.](#) Sexual harassment
- [13.](#) Reporting duty of staff members
- [14.](#) Breaches of Code
- [14A.](#) Disciplinary steps

[SCHEDULE 3](#)

LEGISLATION AMENDED

- [1.](#)
- [2.](#)
- [3.](#)
- [4.](#)
- [5.](#)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1 INTERPRETATION

1. Definitions.—In this Act, unless inconsistent with the context—

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

“**board of directors**”, in relation to a municipal entity, means the board of directors of the entity;
[Definition of “board of directors” inserted by [s. 1 \(a\)](#) of [Act No. 44 of 2003](#).]

“**by-law**” means legislation passed by the council of a municipality binding in the municipality on the persons to whom it applies;

“**category**”, in relation to municipalities, means a category A, B or C municipality envisaged in [section 155 \(1\)](#) of [the Constitution](#);

“**citizen**” means a citizen of the Republic as envisaged in [section 3](#) of [the Constitution](#);

“**Code of Conduct**”, in relation to—

- (a) a councillor, means the Code of Conduct set out in [Schedule 1](#); and
- (b) a staff member of a municipality, means the Code of Conduct set out in [Schedule 2](#);

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

“**delegating authority**”—

- (a) in relation to a delegation of a power or duty by a municipal council, means the municipal council; or
- (b) in relation to a sub-delegation of a power or duty by another political structure, or by a political office bearer, councillor or staff member of a municipality, means that political structure, political office bearer, councillor or staff member;

“**delegation**”, in relation to a duty, includes an instruction to perform the duty, and “**delegate**” has a corresponding meaning;

“**development**” means sustainable development, and includes integrated social, economic, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at—

- (a) improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and
- (b) ensuring that development serves present and future generations;

“**district municipality**” means a category C municipality envisaged in [section 155 \(1\) \(c\)](#) of [the Constitution](#);

“**effective control**”, in relation to a private company, means the power which a shareholder in the private company may have—

- (a) to appoint or remove at least the majority of the board of directors of the private company; or
 - (b) to control at least the majority of the voting rights at a general meeting of the private company;
- [Definition of “[effective control](#)” inserted by [s. 1 \(b\)](#) of [Act No. 44 of 2003](#).]

“**environmentally sustainable**”, in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that—

- (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
- (b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
- (c) legislation intended to protect the environment and human health and safety is complied with;

“**executive authority**”, in relation to a municipality, means the municipality’s executive authority envisaged in [section 156](#) of [the Constitution](#), read with [section 11](#) of this Act;

“**external service provider**” means an external mechanism referred to in [section 76 \(b\)](#) which provides a municipal service for a municipality;

"financially sustainable", in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that the financing of that service from internal and external sources, including budgeted income, grants and subsidies for the service, is sufficient to cover the costs of—

- (a) the initial capital expenditure required for the service;
- (b) operating the service; and
- (c) maintaining, repairing and replacing the physical assets used in the provision of the service;

"integrated development plan" means a plan envisaged in [section 25](#);

"labour legislation" includes collective agreements in terms of the Labour Relations Act, 1995 ([Act No. 66 of 1995](#));

"local community" or **"community"**, in relation to a municipality, means that body of persons comprising—

- (a) the residents of the municipality;
- (b) the ratepayers of the municipality;
- (c) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality; and
- (d) visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality,

and includes, more specifically, the poor and other disadvantaged sections of such body of persons;

"local municipality" means a category B municipality envisaged in [section 155 \(1\) \(b\)](#) of [the Constitution](#);

"MEC" means a member of a provincial Executive Council;

"MEC for local government" means the MEC responsible for local government in a province;

"Minister" means the national Minister responsible for local government;

"multi-jurisdictional service utility" means a body established in terms of [section 87](#);

[Definition of "[multi-jurisdictional service utility](#)" inserted by [s. 1 \(d\)](#) of [Act No. 44 of 2003](#).]

"municipal council" or **"council"** means a municipal council referred to in [section 157 \(1\)](#) of [the Constitution](#);

"municipal entity" means—

- (a) a private company referred to in [section 86B \(1\) \(a\)](#);
- (b) a service utility; or
- (c) a multi-jurisdictional service utility;

[Definition of "[municipal entity](#)" substituted by [s. 1 \(e\)](#) of [Act No. 44 of 2003](#).]

Wording of Sections

"Municipal Finance Management Act" means the Local Government: Municipal Finance Management Act, 2003, and any regulations made under that Act;

[Definition of "[Municipal Finance Management Act](#)" inserted by [s. 1 \(f\)](#) of [Act No. 44 of 2003](#).]

"municipality", when referred to as—

- (a) an entity, means a municipality as described in [section 2](#); and
- (b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 ([Act No. 27 of 1998](#));

"municipal manager" means a person appointed in terms of [section 82](#) of the Municipal Structures Act;

"municipal manager" means a person appointed in terms of [section 54A](#);

[Definition of "[municipal manager](#)" substituted by [s. 1 \(a\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

"municipal service" means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether—

- (a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in [section 76](#) or by engaging an external mechanism contemplated in [section 76](#); and
- (b) fees, charges or tariffs are levied in respect of such a service or not;

[Definition of "[municipal service](#)" inserted by [s. 35 \(a\)](#) of [Act No. 51 of 2002](#).]

"Municipal Structures Act" means the Local Government: Municipal Structures Act, 1998 ([Act No. 117 of 1998](#));

"national organ of state" means an organ of state functioning within the national sphere of government;

"National Treasury" means the National Treasury established by [section 5](#) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#));

[Definition of "[National Treasury](#)" inserted by [s. 1 \(g\)](#) of [Act No. 44 of 2003](#).]

"organised local government" means an organisation recognised in terms of [section 2 \(1\)](#) of the Organised Local Government Act, 1997 ([Act No. 52 of 1997](#)), to represent local government nationally or provincially;

"organ of state" means an organ of state as defined in [section 239](#) of [the Constitution](#);

"parent municipality"—

- (a) in relation to a municipal entity which is a private company in respect of which effective control vests in a single municipality, means that municipality;
- (b) in relation to a municipal entity which is a private company in respect of which effective control vests in two or more municipalities collectively, means each of those municipalities;
- (c) in relation to a municipal entity which is a service utility, means the municipality which established the entity; or
- (d) in relation to a municipal entity which is a multi-jurisdictional service utility, means each municipality which is a party to the agreement establishing the service utility;

[Definition of "[parent municipality](#)" inserted by [s. 1 \(j\)](#) of [Act No. 44 of 2003](#).]

“political office”, in relation to a political party or structure thereof, means—

- (a) the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in any province, region or other area in which the party operates; or
- (b) any position in the party equivalent to a position referred to in [paragraph \(a\)](#), irrespective of the title designated to the position;
[Definition of [“political office”](#) inserted by [s. 1 \(b\)](#) of [Act No. 7 of 2011](#).]

“ownership control”.

[Definition of [“ownership control”](#) deleted by [s. 1 \(j\)](#) of [Act No. 44 of 2003](#).]

Wording of Sections

“political office bearer” means the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive committee as referred to in the Municipal Structures Act;

[Definition of [“political office bearer”](#) substituted by [s. 11](#) of [Act No. 19 of 2008](#).]

Wording of Sections

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

“prescribe” means prescribe by regulation or guidelines in terms of [section 120](#), and **“prescribed”** has a corresponding meaning;

“private company” means a company referred to in sections 19 and 20 of the Companies Act, 1973 ([Act No. 61 of 1973](#));

[Definition of [“private company”](#) inserted by [s. 1 \(j\)](#) of [Act No. 44 of 2003](#).]

“property” means—

- (a) immovable property registered in the name of a person, and includes a unit as defined in [section 1](#) of the Sectional Titles Act, 1986 ([Act No. 95 of 1986](#)); or
- (b) a right registered against immovable property in the name of a person;
[Definition of [“property”](#) inserted by [s. 35 \(b\)](#) of [Act No. 51 of 2002](#).]

“Provincial Gazette” means the official gazette of the province concerned;

“provincial organ of state” means an organ of state functioning within the provincial sphere of government;

“ratepayer”, in relation to a municipality, means a person who is liable to the municipality for the payment of—

- (a) rates on property in the municipality;
- (b) any other tax, duty or levy imposed by the municipality; or
- (c) fees for services provided either by the municipality or in terms of a service delivery agreement;

“registrar of deeds” means a registrar as defined in [section 102](#) of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#));

[Definition of [“registrar of deeds”](#) inserted by [s. 35 \(c\)](#) of [Act No. 51 of 2002](#).]

“resident”, in relation to a municipality, means a person who is ordinarily resident in the municipality;

“service authority” means the power of a municipality to regulate the provision of a municipal service by a service provider;

“service delivery agreement” means an agreement between a municipality and an institution or person mentioned in [section 76 \(b\)](#) in terms of which a municipal service is provided by that institution or person, either for its own account or on behalf of the municipality;

“service provider” means a person or institution or any combination of persons and institutions which provide a municipal service;

“service utility” means a body established in terms of [section 86H](#);

[Definition of [“service utility”](#) substituted by [s. 1 \(k\)](#) of [Act No. 44 of 2003](#).]

Wording of Sections

“staff”, in relation to a municipality, means the employees of the municipality, including the municipal manager;

“this Act” includes any regulations made in terms of [section 120](#);

“type”, in relation to municipalities, means a type of municipality envisaged in [section 155 \(2\)](#) of [the Constitution](#), and defined in Part 2 of [Chapter 1](#) of the Municipal Structures Act.

CHAPTER 2 LEGAL NATURE AND RIGHTS AND DUTIES OF MUNICIPALITIES

2. Legal nature.—A municipality—

- (a) is an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998;
- (b) consists of—
 - (i) the political structures and administration of the municipality; and
 - (ii) the community of the municipality;
- (c) functions in its area in accordance with the political, statutory and other relationships between its political structures, political office bearers and administration and its community; and
- (d) has a separate legal personality which excludes liability on the part of its community for the actions of the municipality.

3. Co-operative government.—(1) Municipalities must exercise their executive and legislative authority within the constitutional system of co-operative government envisaged in [section 41](#) of [the Constitution](#).

(2) The national and provincial spheres of government must, within the constitutional system of co-operative government envisaged in [section 41](#) of [the Constitution](#), exercise their executive and legislative authority in a manner that does not compromise or impede a municipality’s ability or right to exercise its executive and legislative authority.

(3) For the purpose of effective co-operative government, organised local government must seek to—

- (a) develop common approaches for local government as a distinct sphere of government;
- (b) enhance co-operation, mutual assistance and sharing of resources among municipalities;
- (c) find solutions for problems relating to local government generally; and
- (d) facilitate compliance with the principles of co-operative government and intergovernmental relations.

4. Rights and duties of municipal councils.—(1) The council of a municipality has the right to—

- (a) govern on its own initiative the local government affairs of the local community;
- (b) exercise the municipality's executive and legislative authority, and to do so without improper interference; and
- (c) finance the affairs of the municipality by—
 - (i) charging fees for services; and
 - (ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.

to—

- (2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty
 - (a) exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;
 - (b) provide, without favour or prejudice, democratic and accountable government;
 - (c) encourage the involvement of the local community;
 - (d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
 - (e) consult the local community about—
 - (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and
 - (ii) the available options for service delivery;
 - (f) give members of the local community equitable access to the municipal services to which they are entitled;
 - (g) promote and undertake development in the municipality;
 - (h) promote gender equity in the exercise of the municipality's executive and legislative authority;
 - (i) promote a safe and healthy environment in the municipality; and
 - (j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in [sections 24, 25, 26, 27](#) and [29](#) of [the Constitution](#).

(3) A municipality must in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights.

5. Rights and duties of members of local community.—(1) Members of the local community have the right—

- (a) through mechanisms and in accordance with processes and procedures provided for in terms of this Act or other applicable legislation to—
 - (i) contribute to the decision-making processes of the municipality; and
 - (ii) submit written or oral recommendations, representations and complaints to the municipal council or to another political structure or a political office bearer or the administration of the municipality;
- (b) to prompt responses to their written or oral communications, including complaints, to the municipal council or to another political structure or a political office bearer or the administration of the municipality;
- (c) to be informed of decisions of the municipal council, or another political structure or any political office bearer of the municipality, affecting their rights, property and reasonable expectations;
- (d) to regular disclosure of the state of affairs of the municipality, including its finances;
- (e) to demand that the proceedings of the municipal council and those of its committees must be—
 - (i) open to the public, subject to [section 20](#);
 - (ii) conducted impartially and without prejudice; and
 - (iii) untainted by personal self-interest;
- (f) to the use and enjoyment of public facilities; and
- (g) to have access to municipal services which the municipality provides, provided the duties set out in [subsection \(2\) \(b\)](#) are complied with.

(2) Members of the local community have the duty—

- (a) when exercising their rights, to observe the mechanisms, processes and procedures of the municipality;
- (b) where applicable, and subject to [section 97 \(1\) \(c\)](#), to pay promptly service fees, surcharges on fees, rates on property and other taxes, levies and duties imposed by the municipality;
- (c) to respect the municipal rights of other members of the local community;
- (d) to allow municipal officials reasonable access to their property for the performance of municipal functions; and
- (e) to comply with by-laws of the municipality applicable to them.

6. Duties of municipal administrations.—(1) A municipality's administration is governed by the democratic values and principles embodied in [section 195 \(1\)](#) of [the Constitution](#).

(2) The administration of a municipality must—

- (a) be responsive to the needs of the local community;
- (b) facilitate a culture of public service and accountability amongst staff;

- (c) take measures to prevent corruption;
- (d) establish clear relationships, and facilitate co-operation and communication, between it and the local community;
- (e) give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and
- (f) inform the local community how the municipality is managed, of the costs involved and the persons in charge.

7. Exercise of rights and performance of duties.—The rights and duties of municipal councils and of the members of the local community, and the duties of the administrations of municipalities, as set out in [sections 4, 5 and 6](#), are subject to [the Constitution](#), the other provisions of this Act and other applicable legislation.

CHAPTER 3 MUNICIPAL FUNCTIONS AND POWERS

8. General empowerment.—(1) A municipality has all the functions and powers conferred by or assigned to it in terms of [the Constitution](#), and must exercise them subject to [Chapter 5](#) of the Municipal Structures Act.

(2) A municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers.

9. Assignment of functions or powers to municipalities generally by Acts of Parliament or provincial Acts.—(1) A Cabinet member or Deputy Minister seeking to initiate the assignment of a function or power by way of an Act of Parliament to municipalities in general, or any category of municipalities, must within a reasonable time before the draft Act providing for the assignment is introduced in Parliament—

- (a) request the Financial and Fiscal Commission to assess the financial and fiscal implications of the legislation, after informing the Financial and Fiscal Commission of the possible impact of such assignment on—
 - (i) the future division of revenue between the spheres of government in terms of [section 214 of the Constitution](#);
 - (ii) the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities; and
 - (iii) the transfer, if any, of employees, assets and liabilities; and
- (b) consult the Minister, the Minister of Finance and organised local government representing local government nationally with regard to—
 - (i) the assessment by the Financial and Fiscal Commission contemplated in [paragraph \(a\)](#);
 - (ii) the policy goals to be achieved by the assignment and the reasons for utilising assignment as the preferred option;
 - (iii) the financial implications of the assignment projected over at least three years;
 - (iv) any possible financial liabilities or risks after the three-year period referred to in [subparagraph \(iii\)](#);
 - (v) the manner in which additional expenditure by municipalities as a result of the assignment will be funded;
 - (vi) the implications of the assignment for the capacity of municipalities;
 - (vii) the assistance and support that will be provided to municipalities in respect of the assignment; and
 - (viii) any other matter that may be prescribed.

(2) An MEC seeking to initiate the assignment of a function or power by way of a provincial Act to municipalities, or any category of municipalities, in the province must, within a reasonable time before the draft provincial Act providing for the assignment is introduced in the relevant provincial legislature—

- (a) request the Financial and Fiscal Commission to assess the financial and fiscal implications of the legislation, after informing the Financial and Fiscal Commission of the possible impact of such assignment on—
 - (i) the future division of revenue between the spheres of government in terms of [section 214 of the Constitution](#);
 - (ii) the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities; and
 - (iii) the transfer, if any, of employees, assets and liabilities; and
- (b) consult the MEC for local government, the MEC responsible for finance, and organised local government representing local government in the province, with regard to—
 - (i) the assessment by the Financial and Fiscal Commission contemplated in [paragraph \(a\)](#);
 - (ii) the policy goals to be achieved by the assignment and the reasons for utilising assignment as the preferred option;
 - (iii) the financial implications of the assignment projected over at least three years;
 - (iv) any possible financial liabilities or risks after the three-year period referred to in [subparagraph \(iii\)](#);
 - (v) the manner in which additional expenditure by municipalities as a result of the assignment will be funded;
 - (vi) the implications of the assignment for the capacity of municipalities;
 - (vii) the assistance and support that will be provided to municipalities in respect of the assignment; and
 - (viii) any other matter that may be prescribed.

(3) When draft legislation referred to in [subsection \(1\)](#) or [\(2\)](#) is introduced in Parliament or a provincial legislature, the legislation must be accompanied by—

- (a) a memorandum—
 - (i) giving at least a three-year projection of the financial and fiscal implications of the assignment of that function or power for those municipalities;
 - (ii) disclosing any possible financial liabilities or risks after the three-year period;
 - (iii) indicating how any additional expenditure by those municipalities will be funded; and
 - (iv) indicating the implications of the assignment for the capacity of those municipalities; and
- (b) the assessment of the Financial and Fiscal Commission referred to in [subsection \(1\) \(a\)](#) or [\(2\) \(a\)](#), as the case may be.
[S. 9 substituted by s. 2 of Act No. 44 of 2003.]

10. Assignment of functions or powers to specific municipalities by acts of executive or by agreement.—(1) If a function or power is assigned to any specific municipality in terms of a power contained in an Act of Parliament or a provincial Act, or by agreement in terms of [section 99](#) or [126](#) of [the Constitution](#), the organ of state assigning the function or power must, before assigning the function or power, submit to the Minister and the National Treasury a memorandum—

- (a) giving at least a three-year projection of the financial implications of that function or power for the municipality; and
- (b) disclosing any possible financial liabilities or risks after the three-year period; and
- (c) indicating how any additional expenditure by the municipality will be funded.

[[S. 10](#) substituted by [s. 3](#) of [Act No. 44 of 2003](#).]

Wording of Sections

10A. Funding and capacity building.—The Cabinet member, MEC or other organ of state initiating an assignment of a function or power to a municipality in terms of [section 9](#) or [10](#), must take appropriate steps to ensure sufficient funding, and such capacity-building initiatives as may be needed, for the performance of the assigned function or power by the municipality if—

- (a) the assignment of the function or power imposes a duty on the municipality;
- (b) that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of [Schedule 5](#) to [the Constitution](#) or is not incidental to any of those functional areas; and
- (c) the performance of that duty has financial implications for the municipality.

[[S. 10A](#) inserted by [s. 4](#) of [Act No. 44 of 2003](#).]

11. Executive and legislative authority.—(1) The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality subject to [section 59](#).

(2) A municipality may exercise executive and legislative authority within its boundaries only, but may, by written agreement with another municipality and subject to [Chapter 5](#) of the Municipal Structures Act and other applicable national legislation, exercise executive authority in the area of that other municipality.

(3) A municipality exercises its legislative or executive authority by—

- (a) developing and adopting policies, plans, strategies and programmes, including setting targets for delivery;
- (b) promoting and undertaking development;
- (c) establishing and maintaining an administration;
- (d) administering and regulating its internal affairs and the local government affairs of the local community;
- (e) implementing applicable national and provincial legislation and its by-laws;
- (f) providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in [section 78](#);
- (g) monitoring and, where appropriate, regulating municipal services where those services are provided by service providers other than the municipality;
- (h) preparing, approving and implementing its budgets;
- (i) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;
- (j) monitoring the impact and effectiveness of any services, policies, programmes or plans;
- (k) establishing and implementing performance management systems;
- (l) promoting a safe and healthy environment;
- (m) passing by-laws and taking decisions on any of the above-mentioned matters; and
- (n) doing anything else within its legislative and executive competence.

(4) A decision taken by a municipal council or any other political structure of the municipality must be recorded in writing.

12. Legislative procedures.—(1) Only a member or committee of a municipal council may introduce a draft by-law in the council.

(2) A by-law must be made by a decision taken by a municipal council—

- (a) in accordance with the rules and orders of the council; and
- (b) with a supporting vote of a majority of its members.

(3) No by-law may be passed by a municipal council unless—

- (a) all the members of the council have been given reasonable notice; and
- (b) the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law.

(4) [Subsections \(1\) to \(3\)](#) also apply when a municipal council incorporates by reference, as by-laws, provisions of—

- (a) legislation passed by another legislative organ of state; or
- (b) standard draft by-laws made in terms of [section 14](#).

13. Publication of by-laws.—A by-law passed by a municipal council—

- (a) must be published promptly in the *Provincial Gazette*, and, when feasible, also in a local newspaper or in any other practical way to bring the contents of the by-law to the attention of the local community; and
- (b) takes effect when published or on a future date determined in or in terms of the by-law.

14. Standard draft by-laws.—(1) (a) The Minister, at the request of organised local government representing local government nationally, or after consulting the MECs for local government and organised local government, may by notice in the *Gazette*—

- (i) make standard draft by-laws concerning any matter, including standard draft rules and orders referred to in [section 160 \(6\) of the Constitution](#), for which municipal councils may make by-laws; and
- (ii) amend any standard draft by-laws made in terms of [subparagraph \(i\)](#).

(b) Before making any standard draft by-laws or amendment in terms of [paragraph \(a\)](#), the Minister must—

- (i) publish the proposed standard draft by-laws or amendment in the *Gazette* for public comment; and
- (ii) consult the Cabinet member concerned if those standard draft by-laws or amendment affect that Cabinet member's area of responsibility.

(2) (a) An MEC for local government, on request by organised local government representing local government in the province, or after consulting the Minister and organised local government, may by notice in the *Provincial Gazette*—

- (i) make standard draft by-laws concerning any matter for which municipal councils in the province may make by-laws; and
- (ii) amend any standard draft by-laws made in terms of [subparagraph \(i\)](#).

(b) Before making any standard draft by-laws or amendment in terms of [paragraph \(a\)](#), the MEC must—

- (i) publish the proposed standard draft by-laws or amendment in the *Provincial Gazette* for public comment; and
- (ii) consult the MEC concerned if those standard draft by-laws or amendment affect that MEC's area of responsibility.

(3) (a) A standard draft by-law or an amendment of a standard draft by-law is applicable in a municipality only if, and to the extent and subject to any modifications and qualifications, adopted by the council of that municipality.

(b) The repeal of a standard draft by-law after it has been adopted by a municipality does not affect the continuation of that by-law in that municipality.

(4) If a municipal council intends to adopt a standard draft by-law with or without any modifications or qualifications, it must follow the procedure set out in [section 12 \(3\)](#) and, after adoption, publish the by-law in accordance with [section 13](#).

15. Municipal code.—(1) A municipality must compile and maintain in bound or loose-leaf form, and when feasible also in electronic format, a compilation of all its by-laws, including any provisions incorporated by reference as by-laws of the municipality.

(2) This compilation, to be known as the municipal code, must be—

- (a) constantly updated and annotated; and
- (b) kept at the municipality's head office as the municipality's official record of all applicable by-laws.

(3) The municipality, at the request of a member of the public, must provide that person with a copy of or an extract from its municipal code against payment of a reasonable fee determined by the municipal council.

CHAPTER 4 COMMUNITY PARTICIPATION

16. Development of culture of community participation.—(1) A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose—

- (a) encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in—
 - (i) the preparation, implementation and review of its integrated development plan in terms of [Chapter 5](#);
 - (ii) the establishment, implementation and review of its performance management system in terms of [Chapter 6](#);
 - (iii) the monitoring and review of its performance, including the outcomes and impact of such performance;
 - (iv) the preparation of its budget; and
 - (v) strategic decisions relating to the provision of municipal services in terms of [Chapter 8](#);
- (b) contribute to building the capacity of—
 - (i) the local community to enable it to participate in the affairs of the municipality; and
 - (ii) councillors and staff to foster community participation; and
- (c) use its resources, and annually allocate funds in its budget, as may be appropriate for the purpose of implementing [paragraphs \(a\) and \(b\)](#).

(2) [Subsection \(1\)](#) must not be interpreted as permitting interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality.

17. Mechanisms, processes and procedures for community participation.—(1) Participation by the local community in the affairs of the municipality must take place through—

- (a) political structures for participation in terms of the Municipal Structures Act;
- (b) the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act;
- (c) other appropriate mechanisms, processes and procedures established by the municipality;
- (d) councillors; and
- (e) generally applying the provisions for participation as provided for in this Act.

(2) A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for—

- (a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;
- (b) notification and public comment procedures, when appropriate;
- (c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when

appropriate;

- (d) consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and
- (e) report-back to the local community.

(3) When establishing mechanisms, processes and procedures in terms of [subsection \(2\)](#) the municipality must take into account the special needs of—

- (a) people who cannot read or write;
- (b) people with disabilities;
- (c) women; and
- (d) other disadvantaged groups.

(4) A municipal council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council's competence. When appointing the members of such a committee, gender representivity must be taken into account.

18. Communication of information concerning community participation.—(1) A municipality must communicate to its community information concerning

- (a) the available mechanisms, processes and procedures to encourage and facilitate community participation;
- (b) the matters with regard to which community participation is encouraged;
- (c) the rights and duties of members of the local community; and
- (d) municipal governance, management and development.

(2) When communicating the information mentioned in [subsection \(1\)](#), a municipality must take into account—

- (a) language preferences and usage in the municipality; and
- (b) the special needs of people who cannot read or write.

19. Public notice of meetings of municipal councils.—The municipal manager of a municipality must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every—

- (a) ordinary meeting of the council; and
- (b) special or urgent meeting of the council, except when time constraints make this impossible.

20. Admission of public to meetings.—(1) Meetings of a municipal council and those of its committees are open to the public, including the media, and the council or such committee may not exclude the public, including the media, from a meeting, except when—

- (a) it is reasonable to do so having regard to the nature of the business being transacted; and
- (b) a by-law or a resolution of the council specifying the circumstances in which the council or such committee may close a meeting and which complies with [paragraph \(a\)](#), authorises the council or such committee to close the meeting to the public.

(2) A municipal council, or a committee of the council, may not exclude the public, including the media, when considering or voting on any of the following matters:

- (a) A draft by-law tabled in the council;
- (b) a budget tabled in the council;
- (c) the municipality's draft integrated development plan, or any amendment of the plan, tabled in the council;
- (d) the municipality's draft performance management system, or any amendment of the system, tabled in the council;
- (e) the decision to enter into a service delivery agreement referred to in [section 76 \(b\)](#); or
- (f) any other matter prescribed by regulation.

(3) An executive committee mentioned in [section 42](#) of the Municipal Structures Act and a mayoral committee mentioned in [section 60](#) of that Act may, subject to [subsection \(1\) \(a\)](#), close any or all of its meetings to the public, including the media.

(4) A municipal council—

- (a) within the financial and administrative capacity of the municipality, must provide space for the public in the chambers and places where the council and its committees meet; and
- (b) may take reasonable steps to regulate public access to, and public conduct at, meetings of the council and its committees.

21. Communications to local community.—(1) When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done—

- (a) in the local newspaper or newspapers of its area;
- (b) in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or
- (c) by means of radio broadcasts covering the area of the municipality.

(2) Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.

(3) A copy of every notice that must be published in the *Provincial Gazette* or the media in terms of this Act or any other applicable legislation, must be displayed at the municipal offices.

(4) When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person's comments or representations.

(5) (a) When a municipality requires a form to be completed by a member of the local community, a staff member of the municipality must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form.

(b) If the form relates to the payment of money to the municipality or to the provision of any service, the assistance must include an explanation of its terms and conditions.

21A. Documents to be made public.—(1) All documents that must be made public by a municipality in terms of a requirement of this Act, the Municipal Finance Management Act or other applicable legislation, must be conveyed to the local community—

- (a) by displaying the documents at the municipality's head and satellite offices and libraries;
- (b) by displaying the documents on the municipality's official website, if the municipality has a website as envisaged by [section 21B](#); and
- (c) by notifying the local community, in accordance with [section 21](#), of the place, including the website address, where detailed particulars concerning the documents can be obtained.

(2) If appropriate, any notification in terms of [subsection \(1\) \(c\)](#) must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.

[S. 21A inserted by s. 5 of Act No. 44 of 2003.]

21B. Official website.—(1) Each municipality must—

- (a) establish its own official website if the municipality decides that it is affordable; and
- (b) place on that official website information required to be made public in terms of this Act and the Municipal Finance Management Act.

(2) If a municipality decides that it is not affordable for it to establish its own official website, it must provide the information in terms of legislation referred to in [subsection \(1\) \(b\)](#) for display on an organised local government website sponsored or facilitated by the National Treasury.

(3) The municipal manager must maintain and regularly update the municipality's official website, if in existence, or provide the relevant information as required by [subsection \(2\)](#).

[S. 21B inserted by s. 5 of Act No. 44 of 2003.]

22. Regulations and guidelines.—(1) The Minister may in terms of [section 120](#) make regulations or issue guidelines concerning —

- (a) minimum standards for municipalities, including minimum standards relating to funding, when implementing the provisions of this Chapter; and
- (b) any matter that may facilitate—
 - (i) the participation of the local community in the affairs of the municipality; or
 - (ii) the application of this Chapter.

(2) When making regulations or issuing guidelines in terms of [section 120](#) to provide for or to regulate the matters mentioned in [subsection \(1\)](#) of this section, the Minister must—

- (a) take into account the capacity of municipalities to comply with those matters; and
- (b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of [subsection \(3\)](#) may—

- (a) determine different dates on which different provisions of this Chapter become applicable to municipalities;
- (b) apply to all municipalities generally;
- (c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or
- (d) apply to a specific kind of municipality only, as defined in the notice.

CHAPTER 5 INTEGRATED DEVELOPMENT PLANNING

Part 1: General

23. Municipal planning to be developmentally oriented.—(1) A municipality must undertake developmentally-oriented planning so as to ensure that it—

- (a) strives to achieve the objects of local government set out in [section 152](#) of [the Constitution](#);
- (b) gives effect to its developmental duties as required by [section 153](#) of [the Constitution](#); and
- (c) together with other organs of state contribute to the progressive realisation of the fundamental rights contained in [sections 24, 25, 26, 27](#) and [29](#) of [the Constitution](#).

(2) [Subsection \(1\)](#) must be read with [Chapter I](#) of the Development Facilitation Act, 1995 ([Act No. 67 of 1995](#)).

(Date of commencement of [s. 23](#): 1 July, 2001.)

24. Municipal planning in co-operative government.—(1) The planning undertaken by a municipality must be aligned with, and complement, the development plans and strategies of other affected municipalities and other organs of state so as to give effect to the principles of co-operative government contained in [section 41](#) of [the Constitution](#).

(2) Municipalities must participate in national and provincial development programmes as required in [section 153 \(b\)](#) of [the Constitution](#).

(3) If municipalities are required to comply with planning requirements in terms of national or provincial legislation, the responsible organs of state must

- (a) align the implementation of that legislation with the provisions of this Chapter; and
- (b) in such implementation—
 - (i) consult with the affected municipality; and
 - (ii) take reasonable steps to assist the municipality to meet the time limit mentioned in [section 25](#) and the other requirements of this Chapter applicable to its integrated development plan.

(4) An organ of state initiating national or provincial legislation requiring municipalities to comply with planning requirements, must consult with organised local government before the legislation is introduced in Parliament or a provincial legislature, or, in the case of subordinate legislation, before that

legislation is enacted.

(Date of commencement of [s. 24](#): 1 July, 2001.)

25. Adoption of integrated development plans.—(1) Each municipal council must, within a prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality which—

- (a) links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality;
- (b) aligns the resources and capacity of the municipality with the implementation of the plan;
- (c) forms the policy framework and general basis on which annual budgets must be based;
- (d) complies with the provisions of this Chapter; and
- (e) is compatible with national and provincial development plans and planning requirements binding on the municipality in terms of legislation.

(2) An integrated development plan adopted by a municipal council in terms of subsection (1) may be amended in terms of [section 34](#) and remains in force until an integrated development plan is adopted by the next elected council.

(3) (a) A newly elected municipal council may, within the prescribed period referred to in [subsection \(1\)](#), adopt the integrated development plan of its predecessor, but before taking a decision it must comply with [section 29 \(1\) \(b\) \(i\)](#), (c) and (d).

(b) A newly elected municipal council that adopts the integrated development plan of its predecessor with amendments, must effect the amendments in accordance with the process referred to in [section 34 \(b\)](#).

(4) A municipality must, within 14 days of the adoption of its integrated development plan in terms of [subsection \(1\)](#) or (3)—

- (a) give notice to the public—
 - (i) of the adoption of the plan; and
 - (ii) that copies of or extracts from the plan are available for public inspection at specified places; and
- (b) publicise a summary of the plan.

(Date of commencement of [s. 25](#): 1 July, 2001.)

Part 2: Contents of integrated development plans

26. Core components of integrated development plans.—An integrated development plan must reflect—

- (a) the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;
- (b) an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;
- (c) the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;
- (d) the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;
- (e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;
- (f) the council's operational strategies;
- (g) applicable disaster management plans;
- (h) a financial plan, which must include a budget projection for at least the next three years; and
- (i) the key performance indicators and performance targets determined in terms of [section 41](#).

(Date of commencement of [s. 26](#): 1 July, 2001.)

Part 3: Process for planning, drafting, adopting and review of integrated development plans

27. Framework for integrated development planning.—(1) Each district municipality, within a prescribed period after the start of its elected term and after following a consultative process with the local municipalities within its area, must adopt a framework for integrated development planning in the area as a whole.

(2) A framework referred to in [subsection \(1\)](#) binds both the district municipality and the local municipalities in the area of the district municipality, and must at least—

- (a) identify the plans and planning requirements binding in terms of national and provincial legislation on the district municipality and the local municipalities or on any specific municipality;
- (b) identify the matters to be included in the integrated development plans of the district municipality and the local municipalities that require alignment;
- (c) specify the principles to be applied and co-ordinate the approach to be adopted in respect of those matters; and
- (d) determine procedures—
 - (i) for consultation between the district municipality and the local municipalities during the process of drafting their respective integrated development plans; and
 - (ii) to effect essential amendments to the framework.

(Date of commencement of [s. 27](#): 1 July, 2001.)

28. Adoption of process.—(1) Each municipal council, within a prescribed period after the start of its elected term, must adopt a process set out in writing to guide the planning, drafting, adoption and review of its integrated development plan.

(2) The municipality must through appropriate mechanisms, processes and procedures established in terms of [Chapter 4](#), consult the local community

before adopting the process.

(3) A municipality must give notice to the local community of particulars of the process it intends to follow.

(Date of commencement of [s. 28](#): 1 July, 2001.)

29. Process to be followed.—(1) The process followed by a municipality to draft its integrated development plan, including its consideration and adoption of the draft plan, must—

- (a) be in accordance with a predetermined programme specifying time-frames for the different steps;
- (b) through appropriate mechanisms, processes and procedures established in terms of [Chapter 4](#), allow for—
 - (i) the local community to be consulted on its development needs and priorities;
 - (ii) the local community to participate in the drafting of the integrated development plan; and
 - (iii) organs of state, including traditional authorities, and other role players to be identified and consulted on the drafting of the integrated development plan;
- (c) provide for the identification of all plans and planning requirements binding on the municipality in terms of national and provincial legislation; and
- (d) be consistent with any other matters that may be prescribed by regulation.

(2) A district municipality must—

- (a) plan integrated development for the area of the district municipality as a whole but in close consultation with the local municipalities in that area;
- (b) align its integrated development plan with the framework adopted in terms of [section 27](#); and
- (c) draft its integrated development plan, taking into account the integrated development processes of, and proposals submitted to it by the local municipalities in that area.

(3) A local municipality must—

- (a) align its integrated development plan with the framework adopted in terms of [section 27](#); and
- (b) draft its integrated development plan, taking into account the integrated development processes of, and proposals submitted to it by the district municipality.

(Date of commencement of [s. 29](#): 1 July, 2001.)

30. Management of drafting process.—The executive committee or executive mayor of a municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the municipal council, must, in accordance with [section 29](#)—

- (a) manage the drafting of the municipality's integrated development plan;
- (b) assign responsibilities in this regard to the municipal manager; and
- (c) submit the draft plan to the municipal council for adoption by the council.

(Date of commencement of [s. 30](#): 1 July, 2001.)

31. Provincial monitoring and support.—The MEC for local government in the province may, subject to any other law regulating provincial supervision of local government—

- (a) monitor the process followed by a municipality in terms of [section 29](#);
- (b) assist a municipality with the planning, drafting, adoption and review of its integrated development plan;
- (c) facilitate the co-ordination and alignment of—
 - (i) integrated development plans of different municipalities, including those of a district municipality and the local municipalities within its area; and
 - (ii) the integrated development plan of a municipality with the plans, strategies and programmes of national and provincial organs of state;
- (d) take any appropriate steps to resolve disputes or differences in connection with the planning, drafting, adoption or review of an integrated development plan between—
 - (i) a municipality and the local community; and
 - (ii) different municipalities.

(Date of commencement of [s. 31](#): 1 July, 2001.)

32. Copy of integrated development plan to be submitted to MEC for local government.—(1) (a) The municipal manager of a municipality must submit a copy of the integrated development plan as adopted by the council of the municipality, and any subsequent amendment to the plan, to the MEC for local government in the province within 10 days of the adoption or amendment of the plan.

(b) The copy of the integrated development plan to be submitted in terms of [paragraph \(a\)](#) must be accompanied by—

- (i) a summary of the process referred to in [section 29 \(1\)](#);
 - (ii) a statement that the process has been complied with, together with any explanations that may be necessary to amplify the statement; and
 - (iii) in the case of a district and a local municipality, a copy of the framework adopted in terms of [section 27](#).
- (2) The MEC for local government in the province may, within 30 days of receiving a copy of an integrated development plan or an amendment to the plan, or within such reasonable longer period as may be approved by the Minister, request the relevant municipal council—
- (a) to adjust the plan or the amendment in accordance with the MEC's proposals, if the plan or amendment—
 - (i) does not comply with a requirement of this Act; or
 - (ii) is in conflict with or is not aligned with or negates any of the development plans and strategies of other affected municipalities or organs of state; or
 - (b) to comply with the process referred to in [section 29](#), or with a specific provision of this Act relating to the process of drafting or amending integrated development plans if the municipality has failed to comply with that process or provision, and to adjust the plan or the amendment if

that becomes necessary after such compliance.

(3) A municipal council must consider the MEC's proposals, and within 30 days of receiving the MEC's request must—

- (a) if it agrees with those proposals, adjust its integrated development plan or amendment in accordance with the MEC's request; or
- (b) if it disagrees with the proposals, object to the MEC's request and furnish the MEC with reasons in writing why it disagrees.

(4) On receipt of an objection in terms of subsection (3) (b) the MEC may refer the municipality's objection to an *ad hoc* committee referred to in [section 33](#) for decision by the committee. If the MEC decides to refer an objection to an *ad hoc* committee, the objection must be referred within 21 days of receipt of the objection.

(Date of commencement of [s. 32](#): 1 July, 2001.)

33. *Ad hoc* committees.—(1) Whenever necessary, the MEC for local government in a province must appoint an *ad hoc* committee consisting of members representing local government, the provincial government and the national government to decide on an objection by a municipality in terms of [section 32 \(3\) \(b\)](#).

(2) The MEC appoints the members of an *ad hoc* committee representing—

- (a) local government, with the concurrence of the municipality which lodged the objection and any other municipality involved in the dispute;
- (b) the provincial government, with the concurrence of the provincial organ or organs of state involved in the dispute or in whose functional area the dispute is located; and
- (c) the national government, with the concurrence of the national organ or organs of state involved in the dispute or in whose functional area the dispute is located.

(3) An objection referred to an *ad hoc* committee must be dealt with in accordance with procedures prescribed by regulation.

(4) A matter before an *ad hoc* committee is decided if at least two spheres of government agree on the matter.

(5) If the *ad hoc* committee rejects the municipality's objection, the municipality must, within 30 days of the date on which the committee has taken the decision and informed the municipality, comply with the MEC's request.

(Date of commencement of [s. 33](#): 1 July, 2001.)

34. Annual review and amendment of integrated development plan.—A municipal council—

(a) must review its integrated development plan—

- (i) annually in accordance with an assessment of its performance measurements in terms of [section 41](#); and
- (ii) to the extent that changing circumstances so demand; and

(b) may amend its integrated development plan in accordance with a prescribed process.

(Date of commencement of [s. 34](#): 1 July, 2001.)

Part 4: Miscellaneous

35. Status of integrated development plan.—(1) An integrated development plan adopted by the council of a municipality—

- (a) is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality;
- (b) binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails; and
- (c) binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law.

(2) A spatial development framework contained in an integrated development plan prevails over a plan as defined in [section 1](#) of the Physical Planning Act, 1991 ([Act No. 125 of 1991](#)).

(Date of commencement of [s. 35](#): 1 July, 2001.)

36. Municipality to give effect to integrated development plan.—A municipality must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its integrated development plan.

(Date of commencement: 1 July, 2001.)

37. Regulations and guidelines.—(1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in terms of [section 120](#) to provide for or to regulate the following matters:

- (a) incentives to ensure that municipalities adopt their integrated development plans within the applicable prescribed period, and comply with the provisions of this Act concerning the planning, drafting, adoption and review of those plans;
- (b) the detail of integrated development plans taking into account the requirements of other applicable national legislation;
- (c) criteria municipalities must take into account when planning, drafting, adopting or reviewing their integrated development plans;
- (d) the detail of the process for the planning, drafting, adoption and review of integrated development plans;
- (e) a process for the amendment of integrated development plans;
- (f) the manner in which an objection must be referred to an *ad hoc* committee envisaged in [section 33](#);
- (g) the manner in which written evidence or documents must be submitted to an *ad hoc* committee;
- (h) the proceedings of an *ad hoc* committee; and
- (i) any other matter that may facilitate—
 - (i) integrated development planning and the drafting of integrated development plans; or

(ii) the application of this Chapter.

(2) When making regulations or issuing guidelines in terms of [section 120](#) to provide for or to regulate the matters mentioned in [subsection \(1\) \(b\), \(c\), \(d\) and \(e\)](#) of this section, the Minister must—

- (a) take into account the capacity of municipalities to comply with those matters; and
- (b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of [subsection \(3\)](#) may—

- (a) determine different dates on which different provisions of this Chapter becomes applicable to municipalities;
- (b) apply to all municipalities generally;
- (c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or
- (d) apply to a specific kind of municipality only, as defined in the notice.

(Date of commencement of [s. 37](#): 1 July, 2001.)

CHAPTER 6 PERFORMANCE MANAGEMENT

38. Establishment of performance management system.—A municipality must—

- (a) establish a performance management system that is—
 - (i) commensurate with its resources;
 - (ii) best suited to its circumstances; and
 - (iii) in line with the priorities, objectives, indicators and targets contained in its integrated development plan;
- (b) promote a culture of performance management among its political structures, political office bearers and councillors and in its administration; and
- (c) administer its affairs in an economical, effective, efficient and accountable manner.

(Date of commencement of [s. 38](#): 1 July, 2001.)

39. Development of performance management system.—The executive committee or executive mayor of a municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the municipal council must—

- (a) manage the development of the municipality's performance management system;
- (b) assign responsibilities in this regard to the municipal manager, and
- (c) submit the proposed system to the municipal council for adoption.

(Date of commencement of [s. 39](#): 1 July, 2001.)

40. Monitoring and review of performance management system.—A municipality must establish mechanisms to monitor and review its performance management system.

(Date of commencement: 1 July, 2001.)

41. Core components.—(1) A municipality must in terms of its performance management system and in accordance with any regulations and guidelines that may be prescribed—

- (a) set appropriate key performance indicators as a yardstick for measuring performance, including outcomes and impact, with regard to the municipality's development priorities and objectives set out in its integrated development plan;
- (b) set measurable performance targets with regard to each of those development priorities and objectives;
- (c) with regard to each of those development priorities and objectives and against the key performance indicators and targets set in terms of [paragraphs \(a\) and \(b\)](#)—
 - (i) monitor performance; and
 - (ii) measure and review performance at least once per year;
- (d) take steps to improve performance with regard to those development priorities and objectives where performance targets are not met; and
- (e) establish a process of regular reporting to—
 - (i) the council, other political structures, political office bearers and staff of the municipality; and
 - (ii) the public and appropriate organs of state.

(2) The system applied by a municipality in compliance with [subsection \(1\) \(c\)](#) must be devised in such a way that it may serve as an early warning indicator of under-performance.

(Date of commencement of [s. 41](#): 1 July, 2001.)

42. Community involvement.—A municipality, through appropriate mechanisms, processes and procedures established in terms of [Chapter 4](#), must involve the local community in the development, implementation and review of the municipality's performance management system, and, in particular, allow the community to participate in the setting of appropriate key performance indicators and performance targets for the municipality.

(Date of commencement: 1 July, 2001.)

43. General key performance indicators.—(1) The Minister, after consultation with the MECs for local government and organised local government representing local government nationally, may—

- (a) by regulation prescribe general key performance indicators that are appropriate and that can be applied to local government generally; and
- (b) when necessary, review and adjust those general key performance indicators.

(2) Key performance indicators set by a municipality must include any general key performance indicators prescribed in terms of [subsection \(1\)](#), to the extent that these indicators are applicable to the municipality concerned.

(Date of commencement of [s. 43](#): 1 July, 2001.)

44. Notification of key performance indicators and performance targets.—A municipality, in a manner determined by its council, must make known, both internally and to the general public, the key performance indicators and performance targets set by it for purposes of its performance management system.

(Date of commencement: 1 July, 2001.)

45. Audit of performance measurements.—The results of performance measurements in terms of [section 41 \(1\) \(c\)](#) must be audited—

- (a) as part of the municipality's internal auditing processes; and
- (b) annually by the Auditor-General.

(Date of commencement of [s. 45](#): 1 July, 2001.)

46. Annual performance reports.—(1) A municipality must prepare for each financial year a performance report reflecting—

- (a) the performance of the municipality and of each external service provider during that financial year;
- (b) a comparison of the performances referred to in [paragraph \(a\)](#) with targets set for and performances in the previous financial year; and
- (c) measures taken to improve performance.

(2) An annual performance report must form part of the municipality's annual report in terms of [Chapter 12](#) of the Municipal Finance Management Act. [\[S. 46 substituted by s. 6 of Act No. 44 of 2003.\]](#)

Wording of Sections

(Date of commencement of [s. 46](#): 1 July, 2001.)

47. Reports by MEC.—(1) The MEC for local government must annually compile and submit to the provincial legislatures and the Minister a consolidated report on the performance of municipalities in the province.

(2) The report must—

- (a) identify municipalities that under-performed during the year;
- (b) propose remedial action to be taken; and
- (c) be published in the *Provincial Gazette*.

(3) The MEC for local government must submit a copy of the report to the National Council of Provinces.

(Date of commencement of [s. 47](#): 1 July, 2001.)

48. Reports by Minister.—(1) The Minister must annually compile and submit to Parliament and the MECs for local government a consolidated report of local government performance in terms of general key performance indicators.

(2) The report must be published in the *Gazette*.

(Date of commencement of [s. 48](#): 1 July, 2001.)

49. Regulations and guidelines.—(1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in terms of [section 120](#) to provide for or regulate—

- (a) incentives to ensure that municipalities establish their performance management systems within the applicable prescribed period, and comply with the provisions of this Act concerning performance management systems;
- (b) the setting of key performance indicators by a municipality with regard to its development objectives;
- (c) the identification of appropriate general key performance indicators that can be applied to municipalities generally and that reflect the object and intent of [section 23](#);
- (d) the regular review by a municipality of its key performance indicators;
- (e) the setting of a framework for performance targets by municipalities consistent with their development priorities, objectives and strategies set out in their integrated development plans;
- (f) mechanisms, systems and processes for the monitoring and measurement of performance by a municipality with regard to its development objectives;
- (g) the internal auditing of performance measurements;
- (h) the assessment of those performance measurements by a municipality;
- (i) the assessment of progress by a municipality with the implementation of its integrated development plan;
- (j) the improvement of performance;
- (k) any other matter that may facilitate—
 - (i) the implementation by municipalities of an efficient and effective system of performance management; or

(ii) the application of this Chapter.

(2) When making regulations or issuing guidelines in terms of [section 120](#) to provide for or to regulate the matters mentioned in [subsection \(1\)](#) of this section, the Minister must—

- (a) take into account the capacity of municipalities to comply with those matters; and
- (b) differentiate between different kinds of municipalities according to their respective capacities.

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

(4) A notice in terms of [subsection \(3\)](#) may—

- (a) determine different dates on which different provisions of this Chapter becomes applicable to municipalities;
- (b) apply to all municipalities generally;
- (c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or
- (d) apply to a specific kind of municipality only, as defined in the notice.

(Date of commencement of [s. 49](#): 1 July, 2001.)

CHAPTER 7 LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES

Part 1: Basic principles

50. Basic values and principles governing local public administration.—(1) Local public administration is governed by the democratic values and principles embodied in [section 195 \(1\)](#) of [the Constitution](#).

(2) In administering its affairs, a municipality must strive to achieve the objects of local government set out in [section 152 \(1\)](#) of [the Constitution](#), and comply with the duties set out in [sections 4 \(2\)](#) and [6](#).

51. Organisation of administration.—A municipality must within its administrative and financial capacity establish and organise its administration in a manner that would enable the municipality to—

- (a) be responsive to the needs of the local community;
- (b) facilitate a culture of public service and accountability amongst its staff;
- (c) be performance orientated and focused on the objects of local government set out in [section 152](#) of [the Constitution](#) and its developmental duties as required by [section 153](#) of [the Constitution](#);
- (d) ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives set out in the municipality's integrated development plan;
- (e) establish clear relationships, and facilitate co-operation, co-ordination and communication, between—
 - (i) its political structures and political office bearers and its administration;
 - (ii) its political structures, political office bearers and administration and the local community;
- (f) organise its political structures, political office bearers and administration in a flexible way in order to respond to changing priorities and circumstances;
- (g) perform its functions—
 - (i) through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units; and
 - (ii) when necessary, on a decentralised basis;
- (h) assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms;
- (i) hold the municipal manager accountable for the overall performance of the administration;
- (j) maximise efficiency of communication and decision-making within the administration;
- (k) delegate responsibility to the most effective level within the administration;
- (l) involve staff in management decisions as far as is practicable; and
- (m) provide an equitable, fair, open and non-discriminatory working environment.

52. Inconsistency with applicable labour legislation.—In the event of any inconsistency between a provision of this Chapter, including the Code of Conduct referred to in [section 69](#), or a regulation made for the purposes of this Chapter, and any applicable labour legislation, the labour legislation prevails.

Part 2: Political structures, political office bearers and roles

53. Roles and responsibilities.—(1) A municipality must, within the framework of and in accordance with relevant provisions of the Municipal Structures Act, this Act and other applicable legislation, define the specific role and area of responsibility of each political structure and political office bearer of the municipality and of the municipal manager.

(2) The respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager must—

- (a) be defined in precise terms by way of separate terms of reference, in writing, for each political structure or political office bearer and the municipal manager; and
- (b) be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.

(3) Instruments defining, acknowledging or giving effect to the roles and areas of responsibility of these political structures and political office bearers and the municipal manager must be appropriate to the category and type in which the municipality falls.

(4) Terms of reference mentioned in [subsection \(2\) \(a\)](#) may include the delegation of powers and duties to the relevant political structure or political

office bearer or the municipal manager in terms of [section 59](#).

(5) When defining the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager, the municipality must determine—

- (a) the relationships among those political structures and political office bearers and the municipal manager, and the manner in which they must interact;
- (b) appropriate lines of accountability and reporting for those political structures and political office bearers and the municipal manager;
- (c) mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities between those political structures and political office bearers and the municipal manager;
- (d) mechanisms, processes and procedures for resolving disputes between those political structures and political office bearers and the municipal manager; and
- (e) mechanisms, processes and procedures for interaction, between—
 - (i) those political structures and political office bearers and the municipal manager and other staff members of the municipality; and
 - (ii) councillors and the municipal manager and other staff members of the municipality.

(6) If a municipality has a decentralised regional administration in any part of its area, the municipality must determine mechanisms, processes and procedures for interaction between the regional management of the municipality and—

- (a) the ward councillor or other councillor responsible for that part of the municipality's area;
- (b) any subcouncil or ward committee, where applicable, in that part of the municipality's area; and
- (c) the local community in that part of the municipality's area.

54. Code of Conduct for councillors.—The Code of Conduct contained in [Schedule 1](#) applies to every member of a municipal council.

54A. Appointment of municipal managers and acting municipal managers.—(1) The municipal council must appoint—

- (a) a municipal manager as head of the administration of the municipal council; or
- (b) an acting municipal manager under circumstances and for a period as prescribed.

(2) A person appointed as municipal manager in terms of [subsection \(1\)](#) must at least have the skills, expertise, competencies and qualifications as prescribed.

(2A) (a) A person appointed in terms of [subsection \(1\) \(b\)](#) may not be appointed to act for a period that exceeds three months.

(b) A municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in [paragraph \(a\)](#), for a further period that does not exceed three months.

(3) A decision to appoint a person as municipal manager, and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if—

- (a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or
- (b) the appointment was otherwise made in contravention of this Act.

(4) If the post of municipal manager becomes vacant, the municipal council must—

- (a) advertise the post nationally to attract a pool of candidates nationwide; and
- (b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.

(5) The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(6) (a) The municipal council may request the MEC for local government to second a suitable person, on such conditions as prescribed, to act in the advertised position until such time as a suitable candidate has been appointed.

(b) If the MEC for local government has not seconded a suitable person within a period of 60 days after receipt of the request referred to in [paragraph \(a\)](#), the municipal council may request the Minister to second a suitable person, on such conditions as prescribed, until such time as a suitable candidate has been appointed.

(7) (a) The municipal council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of receipt of the information referred to in [paragraph \(a\)](#), submit a copy thereof to the Minister.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC for local government must, within 14 days of receiving the information provided for in [subsection \(7\)](#), take appropriate steps to enforce compliance by the municipal council with this section, which may include an application to a court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council.

(9) Where an MEC for local government fails to take appropriate steps referred to in [subsection \(8\)](#), the Minister may take the steps contemplated in that subsection.

(10) A municipal council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in [subsection \(2\)](#) if it is unable to attract suitable candidates.

(11) A person who has been appointed as acting municipal manager before this section took effect, must be regarded as having been appointed in accordance with this section for the period of the acting appointment.

(12) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.

[S. 54A inserted by [s. 2](#) and amended by [s. 4](#) of [Act No. 7 of 2011](#).]

55. Municipal managers.—(1) As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible and accountable for—

- (a) the formation and development of an economical, effective, efficient and accountable administration—
 - (i) equipped to carry out the task of implementing the municipality's integrated development plan in accordance with [Chapter 5](#);
 - (ii) operating in accordance with the municipality's performance management system in accordance with [Chapter 6](#); and
 - (iii) responsive to the needs of the local community to participate in the affairs of the municipality;
- (b) the management of the municipality's administration in accordance with this Act and other legislation applicable to the municipality;

- (c) the implementation of the municipality's integrated development plan, and the monitoring of progress with implementation of the plan;
 - (d) the management of the provision of services to the local community in a sustainable and equitable manner;
 - (e) the appointment of staff other than those referred to in section 56 (a), subject to the Employment Equity Act, 1998 ([Act No. 55 of 1998](#));
 - (f) the management, effective utilisation and training of staff;
 - (g) the maintenance of discipline of staff;
 - (h) the promotion of sound labour relations and compliance by the municipality with applicable labour legislation;
 - (i) advising the political structures and political office bearers of the municipality;
 - (j) managing communications between the municipality's administration and its political structures and political office bearers;
 - (k) carrying out the decisions of the political structures and political office bearers of the municipality;
 - (l) the administration and implementation of the municipality's by-laws and other legislation;
 - (m) the exercise of any powers and the performance of any duties delegated by the municipal council, or sub-delegated by other delegating authorities of the municipality, to the municipal manager in terms of [section 59](#);
 - (n) facilitating participation by the local community in the affairs of the municipality;
 - (o) developing and maintaining a system whereby community satisfaction with municipal services is assessed;
 - (p) the implementation of national and provincial legislation applicable to the municipality; and
 - (q) the performance of any other function that may be assigned by the municipal council.
- (2) As accounting officer of the municipality the municipal manager is responsible and accountable for—
- (a) all income and expenditure of the municipality;
 - (b) all assets and the discharge of all liabilities of the municipality; and
 - (c) proper and diligent compliance with the Municipal Finance Management Act.

[[Para. \(c\)](#) substituted by [s. 7](#) of [Act No. 44 of 2003](#).]

Wording of Sections

56. Appointment of managers directly accountable to municipal managers.—(1) (a) A municipal council, after consultation with the municipal manager, must appoint—

- (i) a manager directly accountable to the municipal manager; or
- (ii) an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed.

(b) A person appointed in terms of [paragraph \(a\) \(i\)](#) must at least have the skills, expertise, competencies and qualifications as prescribed.

(c) A person appointed in terms of [paragraph \(a\) \(ii\)](#) may not be appointed to act for a period that exceeds three months: Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in [paragraph \(a\)](#), for a further period that does not exceed three months.

(2) A decision to appoint a person referred to in [subsection \(1\) \(a\) \(ii\)](#), and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if—

- (a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or
- (b) the appointment was otherwise made in contravention of this Act, unless the Minister, in terms of [subsection \(6\)](#), has waived any of the requirements listed in [subsection \(1\) \(b\)](#).

(3) If a post referred to in [subsection \(1\) \(a\) \(i\)](#) becomes vacant, the municipal council must—

- (a) advertise the post nationally to attract a pool of candidates nationwide; and
- (b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.

(4) The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(4A) (a) The municipal council must, within 14 days of the date of appointment, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of receipt of the information referred to in [paragraph \(a\)](#), submit a copy thereof to the Minister.

(5) If a person is appointed to a post referred to in [subsection \(1\) \(a\)](#) in contravention of this Act, the MEC for local government must, within 14 days of becoming aware of such appointment, take appropriate steps to enforce compliance by the municipal council with this Act, which steps may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipal council.

(6) A municipal council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in [subsection \(1\) \(b\)](#) if it is unable to attract suitable candidates.

(7) A person appointed in a permanent capacity as a manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section.

(8) A person appointed as an acting manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section only for the period of the acting appointment.

(9) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.

[[S. 56](#) substituted by [s. 3](#) and amended by [s. 4](#) of [Act No. 7 of 2011](#).]

Wording of Sections

56A. Limitation of political rights of municipal managers and managers directly accountable to municipal managers.—(1) A municipal manager or manager directly accountable to a municipal manager may not hold political office in a political party, whether in a permanent, temporary or acting capacity.

(2) This section does not apply to a person appointed as municipal manager or a manager directly accountable to the municipal manager when [subsection \(1\)](#) takes effect.

[[S. 56A](#) inserted by [s. 5](#) of [Act No. 7 of 2011](#).]

57. Employment contracts for municipal managers and managers directly accountable to municipal managers.—(1) A person to be appointed as the

municipal manager of a municipality, and a person to be appointed as a manager directly accountable to the municipal manager, may be appointed to that position only—

- (a) in terms of a written employment contract with the municipality complying with the provisions of this section; and
- (b) subject to a separate performance agreement concluded annually as provided for in [subsection \(2\)](#).

(2) The performance agreement referred to in [subsection \(1\) \(b\)](#) must—

- (a) (i) be concluded within 60 days after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, failing which the appointment lapses: Provided that, upon good cause shown by such person to the satisfaction of the municipality, the appointment shall not lapse; and
- (ii) be concluded annually, thereafter, within one month after the beginning of each financial year of the municipality;
[[Para. \(a\)](#) substituted by [s. 6 \(1\) \(a\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (b) in the case of the municipal manager, be entered into with the municipality as represented by the mayor or executive mayor, as the case may be; and
- (c) in the case of a manager directly accountable to the municipal manager, be entered into with the municipal manager.

(3) The employment contract referred to in [subsection \(1\) \(a\)](#) must—

- (a) include details of duties, remuneration, benefits and other terms and conditions of employment as agreed to by the parties, subject to consistency with—
 - (i) this Act;
 - (ii) any regulations as may be prescribed that are applicable to municipal managers or managers directly accountable to municipal managers; and
 - (iii) any applicable labour legislation; and
- (b) be signed by both parties before the commencement of service.

[[Sub-s. \(3\)](#) substituted by [s. 6 \(1\) \(b\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

(3A) Any regulations or guidelines that relate to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers or managers directly accountable to municipal managers, must be regarded as forming part of an employment contract referred to in [subsection \(1\) \(a\)](#).

[[Sub-s. \(3A\)](#) inserted by [s. 6 \(1\) \(c\)](#) of [Act No. 7 of 2011](#).]

(4) The performance agreement referred to in [subsection \(1\) \(b\)](#) must include—

- (a) performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;
- (b)

[[Para. \(b\)](#) deleted by [s. 6 \(1\) \(d\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (c) the consequences of substandard performance.

(4A) The provisions of the Municipal Finance Management Act conferring responsibilities on the accounting officer of a municipality must be regarded as forming part of the performance agreement of a municipal manager.

[[Sub-s. \(4A\)](#) inserted by [s. 8](#) of [Act No. 44 of 2003](#).]

(4B) Bonuses based on performance may be awarded to a municipal manager or a manager directly accountable to the municipal manager after the end of the financial year and only after an evaluation of performance and approval of such evaluation by the municipal council concerned.

[[Sub-s. \(4B\)](#) inserted by [s. 8](#) of [Act No. 44 of 2003](#).]

(4C) Any regulations that relate to standards and procedures for evaluating performance of municipal managers or managers directly accountable to municipal managers, and intervals for evaluation, must be regarded as forming part of a performance agreement referred to in [subsection \(1\) \(b\)](#).

[[Sub-s. \(4C\)](#) inserted by [s. 6 \(1\) \(e\)](#) of [Act No. 7 of 2011](#).]

(5) The performance objectives and targets referred to in [subsection \(4\) \(a\)](#) must be practical, measurable and based on the key performance indicators set out from time to time in the municipality's integrated development plan.

(6) The employment contract for a municipal manager must—

- (a) be for a fixed term of employment up to a maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality;

[[Para. \(a\)](#) substituted by [s. 12](#) of [Act No. 19 of 2008](#).]

Wording of Sections

- (b) include a provision for cancellation of the contract, in the case of non-compliance with the employment contract or, where applicable, the performance agreement;
- (c) stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and
- (d) reflect the values and principles referred to in [section 50](#), the Code of Conduct set out in [Schedule 2](#), and the management standards and practices contained in [section 51](#).

(7)

[[Sub-s. \(7\)](#) deleted by [s. 6 \(1\) \(f\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

57A. Employment of dismissed staff and record of disciplinary proceedings.—(1) Any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period.

(2) The Minister must prescribe different periods of expiry, as contemplated in [subsection \(1\)](#), for different categories of misconduct.

(3) Notwithstanding [subsection \(1\)](#) and [\(2\)](#), a staff member dismissed for financial misconduct contemplated in [section 171](#) of the Local Government: Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#)), corruption or fraud, may not be re-employed in any municipality for a period of ten years.

(4) Notwithstanding [subsection \(1\)](#), the Minister may prescribe acts of misconduct in respect of which no period need expire before a person may again be employed in any municipality.

(5) Subject to [subsection \(1\)](#), a decision to employ a person dismissed for misconduct must be taken with due regard to the nature of the misconduct concerned.

(6) A municipality must maintain a record that contains the prescribed information regarding the disciplinary proceedings of staff members dismissed for misconduct.

(7) A copy of the record referred to in [subsection \(6\)](#) must be submitted to the MEC for local government on a quarterly basis.

(8) The MEC for local government must, within 14 days of receipt of the record referred to in [subsection \(6\)](#), submit a copy thereof to the Minister.

(9) The Minister must maintain a record of all staff members that have—

- (a) been dismissed for misconduct; or
- (b) resigned prior to the finalisation of the disciplinary proceedings,

which record must be made available to municipalities as prescribed.

[S. 57A inserted by s. 7 of [Act No. 7 of 2011](#).]

58.

[S. 58 repealed by s. 9 of [Act No. 44 of 2003](#).]

Wording of Sections

Part 3: Delegation system

59. Delegations.—(1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may—

- (a) delegate appropriate powers, excluding a power mentioned in [section 160 \(2\)](#) of [the Constitution](#) and the power to set tariffs, to decide to enter into a service delivery agreement in terms of [section 76 \(b\)](#) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors, or staff members;
- (b) instruct any such political structure, political office bearer, councillor, or staff member to perform any of the municipality's duties; and
- (c) withdraw any delegation or instruction.

(2) A delegation or instruction in terms of [subsection \(1\)](#)—

- (a) must not conflict with [the Constitution](#), this Act or the Municipal Structures Act;
- (b) must be in writing;
- (c) is subject to any limitations, conditions and directions the municipal council may impose;
- (d) may include the power to sub-delegate a delegated power;
- (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
- (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.

(3) The municipal council—

- (a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and
- (b) may require its executive committee or executive mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction.

(4) Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in [subsection \(1\)](#).

[Sub-s. (4) added by s. 36 of [Act No. 51 of 2002](#).]

60. Certain delegations restricted to executive committees or executive mayors.—(1) The following powers may, within a policy framework determined by the municipal council, be delegated to an executive committee or executive mayor only:

- (a) decisions to expropriate immovable property or rights in or to immovable property; and
- (b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.

(2) The council may only delegate to the municipal manager the power to make decisions on investments on behalf of the municipality within the municipality's investment policy contemplated in [section 13 \(2\)](#) of the Local Government: Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#)).

[Sub-s. (2) substituted by s. 13 of [Act No. 19 of 2008](#).]

Wording of Sections

61. Referral of matters to delegating authorities for decision.—A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power to dispose of matters falling within the area of responsibility of that political structure, political office bearer, councillor or staff member may, or must if instructed to do so by the relevant delegating authority, refer a matter before the political structure, political office bearer, councillor or staff member to the relevant delegating authority for a decision.

62. Appeals.—(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in [subsection \(4\)](#).

(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(4) When the appeal is against a decision taken by—

- (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
- (b) the municipal manager, the executive committee or executive mayor is the appeal authority, or, if the municipality does not have an executive

committee or executive mayor, the council of the municipality is the appeal authority; or

- (c) a political structure or political office bearer, or a councillor—
- (i) the municipal council is the appeal authority where the council comprises less than 15 councillors; or
 - (ii) a committee of councillors who were not involved in the decision and appointed by the municipal council for this purpose is the appeal authority where the council comprises more than 14 councillors.
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.
[Sub-s. (6) added by s. 37 of Act No. 51 of 2002.]

63. Duty to report to delegating authorities.—A political structure, political office bearer, councillor or staff member of a municipality to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on decisions taken in terms of that delegated or sub-delegated power or duty since the last report.

64. Withdrawal, amendment or lapsing of delegation or sub-delegation.—The withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

65. Review of delegations.—(1) Whenever it becomes necessary in terms of [section 59 \(2\) \(f\)](#) to review a municipality's delegations, the municipal manager must submit to the council—

- (a) a report on the existing delegations issued in terms of [section 59](#) by the council and other delegating authorities of the municipality; and
- (b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.

(2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor.

Part 4: Staff matters

66. Staff establishments.—(1) A municipal manager, within a policy framework determined by the municipal council and subject to any applicable legislation, must—

- (a) develop a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;
[Para. (a) substituted by s. 8 (a) of Act No. 7 of 2011.]

Wording of Sections

- (b) provide a job description for each post on the staff establishment;
- (c) attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and
- (d) establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service.

(2) Subsection (1) (c) and (d) do not apply to remuneration and conditions of service regulated by employment contracts referred to in [section 57](#).

(3) No person may be employed in a municipality unless the post to which he or she is appointed, is provided for in the staff establishment of that municipality.

[Sub-s. (3) inserted by s. 8 (b) of Act No. 7 of 2011.]

(4) A decision to employ a person in a municipality, and any contract concluded between the municipality and that person in consequence of the decision, is null and void if the appointment was made in contravention of [subsection \(3\)](#).

[Sub-s. (4) inserted by s. 8 (b) of Act No. 7 of 2011.]

(5) Any person who takes a decision contemplated in [subsection \(4\)](#), knowing that the decision is in contravention of [subsection \(3\)](#), may be held personally liable for any irregular or fruitless and wasteful expenditure that the municipality may incur as a result of the invalid decision.

[Sub-s. (5) inserted by s. 8 (b) of Act No. 7 of 2011.]

67. Human resource development.—(1) A municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of [section 72 \(1\) \(c\)](#), to ensure fair, efficient, effective and transparent personnel administration, including—

- (a) the recruitment, selection and appointment of persons as staff members;
- (b) service conditions of staff;
- (c) the supervision and management of staff;
- (d) the monitoring, measuring and evaluating of performance of staff;
- (e) the promotion and demotion of staff;
- (f) the transfer of staff;
- (g) grievance procedures;
- (h) disciplinary procedures;
- (i) the investigation of allegations of misconduct and complaints against staff;
- (j) the dismissal and retrenchment of staff; and
- (k) any other matter prescribed by regulation in terms of [section 72](#).

[Sub-s. (1) amended by s. 38 of Act No. 51 of 2002 and by s. 9 (a) of Act No. 7 of 2011.]

Wording of Sections

(2) Systems and procedures adopted in terms of [subsection \(1\)](#), to the extent that they deal with matters falling under applicable labour legislation and

affecting the rights and interests of staff members, must be consistent with such legislation.

- (3) Systems and procedures adopted in terms of [subsection \(1\)](#), apply also to a person referred to in [section 57](#).
[[Sub-s. \(3\)](#) substituted by [s. 9 \(b\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (4) The municipal manager must—
- (a) ensure that every staff member and every relevant representative trade union has easy access to a copy of these staff systems and procedures, including any amendments;
 - (b) on written request by a staff member, make a copy of or extract from these staff systems and procedures, including any amendments, available to that staff member; and
 - (c) ensure that the purpose, contents and consequences of these staff systems and procedures are explained to staff members who cannot read.

68. Capacity building.—(1) A municipality must develop its human resource capacity to a level that enables it to perform its functions and exercise its powers in an economical, effective, efficient and accountable way, and for this purpose must comply with the Skills Development Act, 1998 ([Act No. 81 of 1998](#)), and the Skills Development Levies Act, 1999 ([Act No. 28 of 1999](#)).

(2) A municipality may in addition to any provision for a training levy in terms of the Skills Development Levies Act, 1999, make provision in its budget for the development and implementation of training programmes.

(3) A municipality which does not have the financial means to provide funds for training programmes in addition to the levy payable in terms of the Skills Development Levies Act, 1999, may apply to the Sector Education and Training Authority for local government established in terms of the Skills Development Act, 1998, for such funds.

69. Code of Conduct for municipal staff members.—The Code of Conduct contained in [Schedule 2](#) applies to every staff member of a municipality.

70. Code of Conduct to be provided to staff members and communicated to local community.—(1) The municipal manager of a municipality must—

- (a) provide a copy of the Code of Conduct to every member of the staff of the municipality; and
- (b) provide every staff member with any amendment of the Code of Conduct.

(2) The municipal manager must—

- (a) ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read; and
- (b) communicate sections of the Code of Conduct that affect the public to the local community.

71. Bargaining council agreements.—(1) Organised local government must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the—

- (a) Financial and Fiscal Commission established in terms of [section 220](#) of [the Constitution](#);
- (b) Minister; and
- (c) any other parties as may be prescribed.

(2) Organised local government must, in concluding any collective agreement resulting from negotiations contemplated in [subsection \(1\)](#), take into account—

- (a) the budgets of municipalities;
- (b) the fiscal capacity and efficiency of municipalities; and
- (c) national economic policies.

(3) Municipalities must comply with any collective agreements concluded by organised local government within its mandate on behalf of local government in the bargaining council established for municipalities.

[[S. 71](#) substituted by [s. 10](#) of [Act No. 7 of 2011](#).]

Wording of Sections

71A. Participation of staff members in elections.—(1) A staff member may be a candidate for election to the National Assembly or a provincial legislature or may be nominated as a permanent delegate to the National Council of Provinces subject to the Code of Conduct for Municipal Staff Members contemplated in [Schedule 2](#), and any other prescribed limits and conditions as may be regulated by the Minister.

(2) A staff member who is nominated as a permanent delegate to the National Council of Provinces, must resign not later than the date on which he or she is appointed as a permanent delegate to the National Council of Provinces in the manner contemplated in section 61 (2) (b) of [the Constitution](#) of the Republic of South Africa, 1996.

(3) A staff member may be a candidate for election to a municipal council subject to the Code of Conduct for Municipal Staff Members contemplated in [Schedule 2](#) and any other prescribed limits and conditions as may be regulated by the Minister.

[[S. 71A](#) inserted by [s. 14](#) of [Act No. 19 of 2008](#).]

Part 5: Miscellaneous

72. Regulations and guidelines.—(1) The Minister may, subject to applicable labour legislation and after consultation with the bargaining council established for municipalities and the Minister for the Public Service and Administration, for the purposes of this Chapter make regulations or issue guidelines in accordance with [section 120](#) to regulate or provide for the following matters:

- (a) the procedure to be followed in appealing against decisions taken in terms of delegated powers and the disposal of such appeals;
- (b) the suspension of decisions on appeal;
- (c) the setting of uniform standards for—
 - (i) municipal staff establishments;
 - (ii) municipal staff systems and procedures referred to in [section 67 \(1\)](#) and the matters that must be dealt with in such systems and

procedures, including—

- (aa) transfers; and
- (bb) termination of service.

[Sub-para. (ii) substituted by [s. 11 \(a\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (iii) any other matter concerning municipal personnel administration;
- (d) capacity building within municipal administrations;
- (e) training, competency and skills development of staff members of municipalities, including in-house training, subject to the requirements of the Skills Development Act, 1998 ([Act No. 81 of 1998](#)), the Skills Development Levies Act, 1999 ([Act No. 28 of 1999](#)), and the Municipal Finance Management Act;

[[Para. \(e\)](#) substituted by [s. 11 \(b\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (f) the establishment of job evaluation systems;
- (g) the regulation of remuneration and other conditions of service of staff members of municipalities, subject to applicable labour legislation;
- (gA) subject to applicable labour legislation, the regulation of medical aid and pension, after consultation with the Minister of Health and the Minister of Finance;

[[Para. \(gA\)](#) inserted by [s. 11 \(c\)](#) of [Act No. 7 of 2011](#).]

- (gB) the level of skills, expertise and competency that municipal managers and managers directly accountable to municipal managers must have;

[[Para. \(gB\)](#) inserted by [s. 11 \(c\)](#) of [Act No. 7 of 2011](#).]

- (gC) prohibiting the performance of remunerative work outside the municipality;

[[Para. \(gC\)](#) inserted by [s. 11 \(c\)](#) of [Act No. 7 of 2011](#).]

- (h) the measuring and evaluation of staff performance;

- (i) the development of remuneration grading and incentive frameworks for staff members of municipalities;

- (j) notwithstanding [section 67 \(1\) \(h\)](#), the Minister may make regulations to provide for a disciplinary code and procedures for municipal managers and managers directly accountable to the municipal managers;

- (k) corrective steps in the case of substandard performance by staff members of municipalities; and

- (l) any other matter that may facilitate the implementation by a municipality of an efficient and effective system of personnel administration.

[[Sub-s. \(1\)](#) substituted by [s. 15](#) of [Act No. 19 of 2008](#).]

Wording of Sections

(2) When making regulations or issuing guidelines in terms of [section 120](#) to provide for or to regulate the matters mentioned in [subsection \(1\)](#) of this section, the Minister must—

- (a) take into account the capacity of municipalities to comply with those matters;

[[Para. \(a\)](#) amended by [s. 11 \(d\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (b) differentiate between different kinds of municipalities according to their respective capacities; and

[[Para. \(b\)](#) amended by [s. 11 \(e\)](#) of [Act No. 7 of 2011](#).]

Wording of Sections

- (c) when necessary, differentiate between different categories of municipal staff members.

[[Para. \(c\)](#) inserted by [s. 11 \(f\)](#) of [Act No. 7 of 2011](#).]

(2A) The Minister may, subject to applicable labour legislation and after consultation with the Minister for Public Service and Administration, make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers.

[[Sub-s. \(2A\)](#) inserted by [s. 11 \(g\)](#) of [Act No. 7 of 2011](#).]

(3) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Chapter which place a financial or administrative burden on municipalities.

- (4) A notice in terms of [subsection \(3\)](#) may—

- (a) determine different dates on which different provisions of this Chapter becomes applicable to municipalities;

- (b) apply to all municipalities generally;

- (c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or

- (d) apply to a specific kind of municipality only, as defined in the notice.

CHAPTER 8 MUNICIPAL SERVICES

73. General duty.—(1) A municipality must give effect to the provisions of [the Constitution](#) and—

- (a) give priority to the basic needs of the local community;

- (b) promote the development of the local community; and

- (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.

- (2) Municipal services must—

- (a) be equitable and accessible;

- (b) be provided in a manner that is conducive to—

- (i) the prudent, economic, efficient and effective use of available resources; and

- (ii) the improvement of standards of quality over time;

- (c) be financially sustainable;
- (d) be environmentally sustainable; and
- (e) be regularly reviewed with a view to upgrading, extension and improvement.

Part 1: Service tariffs

74. Tariff policy.—(1) A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act, the Municipal Finance Management Act and any other applicable legislation.

[Sub-s. (1) substituted by s. 10 of Act No. 44 of 2003.]

Wording of Sections

(2) A tariff policy must reflect at least the following principles, namely that—

- (a) users of municipal services should be treated equitably in the application of tariffs;
- (b) the amount individual users pay for services should generally be in proportion to their use of that service;
- (c) poor households must have access to at least basic services through—
 - (i) tariffs that cover only operating and maintenance costs;
 - (ii) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or
 - (iii) any other direct or indirect method of subsidisation of tariffs for poor households;
- (d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;
- (e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned;
- (f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;
- (g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;
- (h) the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged;
- (i) the extent of subsidisation of tariffs for poor households and other categories of users should be fully disclosed.

(3) A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.

75. By-laws to give effect to policy.—(1) A municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.

(2) By-laws in terms of [subsection \(1\)](#) may differentiate between different categories of users, debtors, service providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination.

75A. General power to Levy and recover fees, charges and tariffs.—(1) A municipality may—

- (a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and
- (b) recover collection charges and interest on any outstanding amount.

(2) The fees, charges or tariffs referred to in [subsection \(1\)](#) are levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.

(3) After a resolution contemplated in [subsection \(2\)](#) has been passed, the municipal manager must, without delay—

- (a) conspicuously display a copy of the resolution for a period of at least 30 days at the main administrative office of the municipality and at such other places within the municipality to which the public has access as the municipal manager may determine;
- (b) publish in a newspaper of general circulation in the municipality a notice stating—
 - (i) that a resolution as contemplated in [subsection \(2\)](#) has been passed by the council;
 - (ii) that a copy of the resolution is available for public inspection during office hours at the main administrative office of the municipality and at the other places specified in the notice; and
 - (iii) the date on which the determination will come into operation; and
- (c) seek to convey the information referred to in [paragraph \(b\)](#) to the local community by means of radio broadcasts covering the area of the municipality.

(4) The municipal manager must forthwith send a copy of the notice referred to in [subsection \(3\) \(b\)](#) to the MEC for local government concerned.

[S. 75A inserted by s. 39 of Act No. 51 of 2002.]

Part 2: Provision of services

76. Mechanisms for provision of services.—A municipality may provide a municipal service in its area or a part of its area through—

- (a) an internal mechanism, which may be—
 - (i) a department or other administrative unit within its administration;
 - (ii) any business unit devised by the municipality, provided it operates within the municipality's administration and under the control of the council in accordance with operational and performance criteria determined by the council; or
 - (iii) any other component of its administration; or
- (b) an external mechanism by entering into a service delivery agreement with—
 - (i) a municipal entity;

- (ii) another municipality;
- (iii) an organ of state, including—
 - (aa) a water services committee established in terms of the Water Services Act, 1997 ([Act No. 108 of 1997](#));
[Item (aa) substituted by s. 40 of [Act No. 51 of 2002](#).]

Wording of Sections

- (bb) a licensed service provider registered or recognised in terms of national legislation; and
- (cc) a traditional authority;
- (iv) a community based organisation or other non-governmental organisation legally competent to enter into such an agreement; or
- (v) any other institution, entity or person legally competent to operate a business activity.

77. Occasions when municipalities must review and decide on mechanisms to provide municipal services.—A municipality must review and decide on the appropriate mechanism to provide a municipal service in the municipality or a part of the municipality—

- (a) in the case of a municipal service provided through an internal mechanism contemplated in [section 76](#), when—
 - (i) an existing municipal service is to be significantly upgraded, extended or improved;
 - (ii) a performance evaluation in terms of [Chapter 6](#) requires a review of the mechanism; or
 - (iii) the municipality is restructured or reorganised in terms of the Municipal Structures Act;
- (b) in the case of a municipal service provided through an external mechanism contemplated in [section 76](#), when—
 - (i) a performance evaluation in terms of [Chapter 6](#) requires a review of the service delivery agreement;
 - (ii) the service delivery agreement is anticipated to expire or be terminated within the next 12 months; or
 - (iii) an existing municipal service or part of that municipal service is to be significantly upgraded, extended or improved and such upgrade, extension or improvement is not addressed in the service delivery agreement;
- (c) when a review is required by an intervention in terms of [section 139](#) of [the Constitution](#);
- (d) when a new municipal service is to be provided;
- (e) when requested by the local community through mechanisms, processes and procedures established in terms of [Chapter 4](#); or
- (f) when a review of its integrated development plan requires a review of the delivery mechanism.
[[S. 77](#) substituted by s. 41 of [Act No. 51 of 2002](#).]

Wording of Sections

78. Criteria and process for deciding on mechanisms to provide municipal services.—(1) When a municipality has in terms of [section 77](#) to decide on a mechanism to provide a municipal service in the municipality or a part of the municipality, or to review any existing mechanism—

- (a) it must first assess—
 - (i) the direct and indirect costs and benefits associated with the project if the service is provided by the municipality through an internal mechanism, including the expected effect on the environment and on human health well-being and safety;
 - (ii) the municipality's capacity and potential future capacity to furnish the skills, expertise and resources necessary for the provision of the service through an internal mechanism mentioned in [section 76 \(a\)](#);
 - (iii) the extent to which the re-organisation of its administration and the development of the human resource capacity within that administration as provided for in [sections 51](#) and [68](#), respectively, could be utilised to provide a service through an internal mechanism mentioned in [section 76 \(a\)](#);
 - (iv) the likely impact on development, job creation and employment patterns in the municipality, and
 - (v) the views of organised labour; and
- (b) it may take into account any developing trends in the sustainable provision of municipal services generally.
- (2) After having applied [subsection \(1\)](#), a municipality may—
 - (a) decide on an appropriate internal mechanism to provide the service; or
 - (b) before it takes a decision on an appropriate mechanism, explore the possibility of providing the service through an external mechanism mentioned in [section 76 \(b\)](#).
- (3) If a municipality decides in terms of [subsection \(2\) \(b\)](#) to explore the possibility of providing the municipal service through an external mechanism it must—
 - (a) give notice to the local community of its intention to explore the provision of the municipal service through an external mechanism;
 - (b) assess the different service delivery options in terms of [section 76 \(b\)](#), taking into account—
 - (i) the direct and indirect costs and benefits associated with the project, including the expected effect of any service delivery mechanism on the environment and on human health, well-being and safety;
 - (ii) the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of the service;
 - (iii) the views of the local community;
 - (iv) the likely impact on development, job creation and employment patterns in the municipality; and
 - (v) the views of organised labour; and
 - (c) conduct or commission a feasibility study which must be taken into account and which must include—
 - (i) a clear identification of the municipal service for which the municipality intends to consider an external mechanism;
 - (ii) an indication of the number of years for which the provision of the municipal service through an external mechanism might be considered;
 - (iii) the projected outputs which the provision of the municipal service through an external mechanism might be expected to produce;
 - (iv) an assessment as to the extent to which the provision of the municipal service through an external mechanism will—

- (aa) provide value for money;
- (bb) address the needs of the poor;
- (cc) be affordable for the municipality and residents; and
- (dd) transfer appropriate technical, operational and financial risk;
- (v) the projected impact on the municipality's staff, assets and liabilities;
- (vi) the projected impact on the municipality's integrated development plan;
- (vii) the projected impact on the municipality's budgets for the period for which an external mechanism might be used, including impacts on revenue, expenditure, borrowing, debt and tariffs; and
- (viii) any other matter that may be prescribed.

[Sub-s. (3) substituted by s. 11 (a) of Act No. 44 of 2003.]

Wording of Sections

(4) After having applied [subsection \(3\)](#), a municipality must decide on an appropriate internal or external mechanism, taking into account the requirements of [section 73 \(2\)](#) in achieving the best outcome.

(5) When applying this section a municipality must comply with—

- (a) any applicable legislation relating to the appointment of a service provider other than the municipality; and
- (b) any additional requirements that may be prescribed by regulation.

(6) The national government or relevant provincial government may, in accordance with an agreement, assist municipalities in carrying out a feasibility study referred to in [subsection \(3\) \(c\)](#), or in preparing service delivery agreements.

[Sub-s. (6) added by s. 11 (b) of Act No. 44 of 2003.]

79. Provision of services by municipality through internal mechanisms.—If a municipality decides to provide a municipal service through an internal mechanism mentioned in [section 76 \(a\)](#), it must—

- (a) allocate sufficient human, financial and other resources necessary for the proper provision of the service; and
- (b) transform the provision of that service in accordance with the requirements of this Act.

80. Provision of services through service delivery agreements with external mechanisms.—(1) If a municipality decides to provide a municipal service through a service delivery agreement in terms of [section 76 \(b\)](#) with—

- (a) a municipal entity or another municipality, it may, subject to [subsection \(3\)](#), negotiate and enter into such an agreement with the relevant municipal entity or municipality without applying Part 3 of this Chapter;
- (aA) a national or provincial organ of state, it may enter into such an agreement with the relevant organ of state without applying Part 3 of this Chapter; or

[Para. (aA) inserted by s. 12 of Act No. 44 of 2003.]

- (b) any institution or entity, or any person, juristic or natural, not mentioned in [paragraph \(a\)](#) or (aA), it must apply Part 3 of this Chapter before entering into such an agreement with any such institution, entity or person.

(2) Before a municipality enters into a service delivery agreement with an external service provider it must establish a programme for community consultation and information dissemination regarding the appointment of the external service provider and the contents of the service delivery agreement. The contents of a service delivery agreement must be communicated to the local community through the media.

(3) (a) Where a municipality decides to enter into a service delivery agreement with another municipality as contemplated by [section 76 \(b\) \(ii\)](#), that other municipality must conduct or commission a feasibility study, which it must take into account, before the service delivery agreement is entered into.

(b) The feasibility study referred to in [paragraph \(a\)](#), must include—

- (i) an assessment on the impact on the budget of that other municipality, and on its assets, liabilities and staff expenditure, for each of the financial years that it intends to serve as an external service provider;
- (ii) an assessment on whether it will be necessary to increase the number of staff to enable that other municipality to be an external service provider, and whether it will be necessary to transfer or second any staff from the appointing municipality to that other municipality;
- (iii) an assessment on the ability of that other municipality to absorb any commitments, liabilities or employees involved, if and when the appointment as external service provider ends; and
- (iv) any other relevant information as may be prescribed.

[S. 80 substituted by s. 12 of Act No. 44 of 2003.]

Wording of Sections

81. Responsibilities of municipalities when providing services through service delivery agreements with external mechanisms.—(1) If a municipal service is provided through a service delivery agreement in terms of [section 76 \(b\)](#), the municipality remains responsible for ensuring that that service is provided to the local community in terms of the provisions of this Act, and accordingly must—

- (a) regulate the provision of the service, in accordance with [section 41](#);
- (b) monitor and assess the implementation of the agreement, including the performance of the service provider in accordance with [section 41](#);
- (c) perform its functions and exercise its powers in terms of Chapters 5 and 6 if the municipal service in question falls within a development priority or objective in terms of the municipality's integrated development plan;
- (d) within a tariff policy determined by the municipal council in terms of [section 74](#), control the setting and adjustment of tariffs by the service provider for the municipal service in question; and
- (e) generally exercise its service authority so as to ensure uninterrupted delivery of the service in the best interest of the local community.

(2) A municipality, through a service delivery agreement—

(a) may assign to a service provider responsibility for—

- (i) developing and implementing detailed service delivery plans within the framework of the municipality's integrated development plan;
- (ii) the operational planning, management and provision of the municipal service;
- (iii) undertaking social and economic development that is directly related to the provision of the service;

(iv) customer management;

(v) managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality, subject to the Municipal Finance Management Act;
[Sub-para. (v) substituted by s. 13 (a) of Act No. 44 of 2003.]

Wording of Sections

(vi) the collection of service fees for its own account from users of services in accordance with the municipal council's tariff policy in accordance with the credit control measures established in terms of Chapter 9;

(b) may pass on to the service provider, through a transparent system that must be subject to performance monitoring and audit, funds for the subsidisation of services to the poor;

(bA) must ensure that the agreement provides for a dispute-resolution mechanism to settle disputes between the municipality and the service provider;

[Para. (bA) inserted by s. 13 (b) of Act No. 44 of 2003.]

(c) may in accordance with applicable labour legislation, transfer or second any of its staff members to the service provider, with the concurrence of the staff member concerned;

(d) must ensure continuity of the service if the service provider is placed under judicial management, becomes insolvent, is liquidated or is for any reason unable to continue performing its functions in terms of the service delivery agreement; and

(e) must, where applicable, take over the municipal service, including all assets, when the service delivery agreement expires or is terminated.

(3) The municipal council has the right to set, review or adjust the tariffs within its tariff policy. The service delivery agreement may provide for the adjustment of tariffs by the service provider within the limitations set by the municipal council.

(4) A service delivery agreement may be amended by agreement between the parties, except where an agreement has been concluded following a competitive bidding process, in which case an amendment can only be made after the local community has been given—

(a) reasonable notice of the intention to amend the agreement and the reasons for the proposed amendment; and

(b) sufficient opportunity to make representations to the municipality.

(5) No councillor or staff member of a municipality may share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

82.

[S. 82 repealed by s. 14 of Act No. 44 of 2003.]

Wording of Sections

Part 3: Service delivery agreements involving competitive bidding

83. Competitive bidding.—(1) If a municipality decides to provide a municipal service through a service delivery agreement with a person referred to in section 80 (1) (b), it must select the service provider through selection processes which—

(a) comply with Chapter 11 of the Municipal Finance Management Act;

[Para. (a) substituted by s. 15 of Act No. 44 of 2003.]

Wording of Sections

(b) allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;

(c) minimise the possibility of fraud and corruption;

(d) make the municipality accountable to the local community about progress with selecting a service provider, and the reasons for any decision in this regard; and

(e) takes into account the need to promote the empowerment of small and emerging enterprises.

(2) Subject to the provisions of the Preferential Procurement Policy Framework Act, (Act No. 5 of 2000), a municipality may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services.

(3) The selection process referred to in subsection (1), must be fair, equitable, transparent, cost-effective and competitive, and as may be provided for in other applicable national legislation.

(4) In selecting a service provider a municipality must apply the criteria listed in section 78 as well as any preference for categories of service providers referred to in subsection (2) of this section.

84. Negotiation and agreement with prospective service provider.—(1) After a prospective service provider has been selected, the municipality must on the basis of the bidding documents, and any addenda, amendments or variations thereto that were provided to all the bidders, negotiate the final terms and conditions of the service delivery agreement with the preferred service provider and, if successful, enter into such an agreement with the selected service provider on the terms and conditions specified in the bidding documents, as modified or supplemented in the negotiations, if such modifications do not materially affect the bid in a manner which compromises the integrity of the bidding process.

(2) If the municipality and the selected service provider fail to reach agreement within a reasonable time allowed by the municipality for negotiations, the municipality may negotiate with the next-ranked prospective service provider.

(3) When a municipality has entered into a service delivery agreement it must—

(a) make copies of the agreement available at its offices for public inspection during office hours; and

(b) give notice in the media of—

(i) particulars of the service that will be provided under the agreement;

(ii) the name of the selected service provider; and

(iii) the place where and the period for which copies of the agreement are available for public inspection.

Part 4: Internal municipal service districts

[Heading substituted by s. 16 of Act No. 44 of 2003.]

85. Establishment of internal municipal service districts.—(1) A municipality may, in accordance with the policy framework referred to in [section 86](#), establish a part of the municipality as an internal municipal service district to facilitate the provision of a municipal service in that part of the municipality.

- (2) Before establishing an internal municipal service district, the municipality must—
- (a) consult the local community on the following matters:
 - (i) The proposed boundaries of the service district;
 - (ii) the proposed nature of the municipal service that is to be provided;
 - (iii) the proposed method of financing the municipal service; and
 - (iv) the proposed mechanism for the provision of the municipal service; and
 - (b) obtain the consent of the majority of the members of the local community in the proposed service district that will be required to contribute to the provision of the municipal service.
- (3) When a municipality establishes an internal municipal service district, the municipality—
- (a) must determine the boundaries of the district;
 - (b) must determine the mechanism that will provide the service in the district;
 - (c) in order to finance the service in the district, may—
 - (i) set a tariff or levy for the service in the district;
 - (ii) impose a special surcharge in the district on the tariff for the service; or
 - (iii) increase the tariff in the district for that service;
 - (d) must establish separate accounting and other record-keeping systems with respect to the provision of the service in the district; and
 - (e) may establish a committee composed of persons representing the community in the district to act as a consultative and advisory forum for the municipality regarding the management of and other matters relating to the service in the district, provided that gender representivity is taken into account when such a committee is established.

86. Policy framework for internal municipal service district.—(1) A municipality must develop and adopt a policy framework for the establishment, regulation and management of an internal municipal service district.

- (2) Such a policy framework must reflect at least the following:
- (a) The development needs and priorities of designated parts of the municipality that must be balanced against that of the municipality as a whole;
 - (b) the extent to which the establishment of one or more internal municipal service districts—
 - (i) will promote the local economic development of the municipality as a whole;
 - (ii) will contribute to enhancing the social, economic and spatial integration of the municipality; and
 - (iii) may not entrench or contribute to further disparities in service provision.

Part 4A: Regulations and guidelines regarding municipal services

[Part 4A inserted by [s. 17](#) of [Act No. 44 of 2003](#).]

86A. Regulations and guidelines regarding municipal services.—(1) The Minister may for purposes of this Chapter make regulations or issue guidelines in accordance with [section 120](#) to provide for or regulate the following matters:

- (a) The preparation, adoption and implementation of a municipal tariff policy;
- (b) the subsidisation of tariffs for poor households through—
 - (i) cross-subsidisation within and between services;
 - (ii) equitable share allocations to municipalities; and
 - (iii) national and provincial grants to municipalities;
- (c) limits on tariff increases;
- (d)

[[Para. \(d\)](#) repealed by [s. 13](#) of [Act No. 12 of 2007](#). (English only)]

Wording of Sections

- (e) incentives and penalties to encourage—
 - (i) the economical, efficient and effective use of resources when providing services;
 - (ii) the recycling of waste; and
 - (iii) other environmental objectives;
- (f) criteria to be taken into account by municipalities when assessing options for the provision of a municipal service;
- (g) measures against malpractice in selecting and appointing service providers, including measures against the stripping of municipal assets;
- (h) mechanisms and procedures for the co-ordination and integration of sectoral requirements in terms of legislation with this Chapter, and the manner in which municipalities must comply with these;
- (i) standard draft service delivery agreements;
- (j) the minimum content and management of service delivery agreements;
- (k) additional matters that must be included in a feasibility study in terms of [section 78 \(3\) \(c\)](#), which may include—
 - (i) the strategic and operational costs and benefits of an external mechanism in terms of the municipality's strategic objectives;
 - (ii) an assessment of the municipality's capacity to effectively monitor the provision of the municipal service through an external mechanism and to enforce the service delivery agreement;
- (l) performance guarantees by service providers; and

- (m) any other matter that would facilitate—
 - (i) the effective and efficient provision of municipal services; or
 - (ii) the application of this Chapter.

(2) The Minister may only make regulations and issue guidelines contemplated in [subsection \(1\) \(a\) to \(e\)](#) after consulting with the Minister of Finance and any other Cabinet member whose portfolio is affected by such regulations and guidelines.

(3) When making regulations or issuing guidelines in terms of [section 120](#) to provide for or regulate the matters mentioned in [subsection \(1\)](#), the Minister must—

- (a) take into account the capacity of municipalities to comply with such regulations and guidelines; and
- (b) differentiate between different kinds of municipalities according to their respective capacities.

[[S. 86A](#) inserted by [s. 17](#) of [Act No. 44 of 2003](#).]

CHAPTER 8A MUNICIPAL ENTITIES

[Ch. 8A inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

Part 1: General provisions

[Part 1 inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86B. Kinds of municipal entities.—(1) There are the following kinds of municipal entities:

- (a) a private company—
 - (i) established by one or more municipalities in terms of Part 2; or
 - (ii) in which one or more municipalities have acquired or hold an interest in terms of Part 2;
- (b) a service utility established by a municipality in terms of Part 3; and
- (c) a multi-jurisdictional service utility established by two or more municipalities in terms of Part 4.

(2) No municipality may establish, or participate in the establishment of, or acquire or hold an interest in, a corporate body, including a trust, except where such corporate body is—

- (a) a private company, service utility or multi-jurisdictional service utility referred to in [subsection \(1\)](#); or
- (b) a fund for the benefit of its employees in terms of a law regulating pensions or medical aid schemes.

(3) [Subsection \(2\)](#) does not apply to the acquisition by a municipality for investment purposes of securities in a company listed on the Johannesburg Securities Exchange in accordance with the investment framework envisaged in [section 13](#) of the Municipal Finance Management Act.

[[S. 86B](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

Part 2: Private companies

[Part 2 inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86C. Establishment and acquisition of private companies.—(1) A municipality may, subject to [subsection \(2\)](#)—

- (a) establish or participate in the establishment of a private company in accordance with the Companies Act, 1973 ([Act No. 61 of 1973](#)); or
- (b) acquire or hold an interest in a private company in accordance with the Companies Act, 1973 ([Act No. 61 of 1973](#)).

(2) (a) A municipality may in terms of [subsection \(1\) \(a\)](#) or [\(b\)](#) either acquire or hold full ownership of a private company, or acquire or hold a lesser interest in a private company.

(b) A municipality may acquire or hold such a lesser interest in a private company only if all the other interests are held by—

- (i) another municipality or municipalities;
- (ii) a national or provincial organ of state or organs of state; or
- (iii) any combination of institutions referred to in [subparagraphs \(i\)](#) and [\(ii\)](#).

(c) A municipality may, despite [paragraph \(b\)](#), acquire or hold an interest in a private company in which an investor other than another municipality or a national or provincial organ of state has an interest, but only if effective control in the private company vests in—

- (i) that municipality;
- (ii) another municipality; or
- (iii) that municipality and another municipality collectively.

(3) If a municipality establishes a private company or acquires or holds an interest in such a company, it must comply with the Companies Act, 1973 ([Act No. 61 of 1973](#)), and any other law regulating companies, but if any conflict arises between that Act or such law and a provision of this Act, this Act prevails.

[[S. 86C](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86D. Legal status of private companies established by municipalities or in which municipalities hold interests.—(1) A private company referred to in [section 86C \(1\)](#)—

- (a) is a municipal entity if a municipality, or two or more municipalities collectively, have effective control of the private company; or
- (b) is a public entity to which the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), applies if ownership control in the company, within the meaning of that Act, is held by a national or provincial organ of state.

(2) A private company which is a municipal entity—

- (a) must restrict its activities to the purpose for which it is used by its parent municipality in terms of [section 86E \(1\) \(a\)](#); and
- (b) has no competence to perform any activity which falls outside the functions and powers of its parent municipality contemplated by [section 8](#).

[[S. 86D](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86E. Conditions precedent for establishing or acquiring interests in private companies.—(1) A municipality may establish a private company or acquire an interest in such a company only—

- (a) for the purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers referred to in [section 8](#);
- (b) if the municipality can demonstrate that—
 - (i) there is a need to perform that function or power in accordance with business practices in order to achieve the strategic objectives of the municipality more effectively; and
 - (ii) the company would benefit the local community; and
- (c) if any other conditions that may be prescribed have been complied with.

(2) If a municipality establishes a private company or acquires an interest in such a company for the purpose of using that company as a mechanism to provide a municipal service, [Chapter 8](#) applies.

[[S. 86E](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86F. Conditions precedent for co-owning of private companies.—If two or more municipalities intend to establish a private company or to acquire interests in the same private company, each of those municipalities must—

- (a) comply with [section 86E](#);
- (b) consider and reach agreement on proposals for shared control of the company; and
- (c) consider cash flow projections of the company's proposed operations for at least three financial years.

[[S. 86F](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86G. Disposal of companies and equity interests in companies.—A municipality may transfer ownership or otherwise dispose of—

- (a) a wholly owned private company, subject to the Municipal Finance Management Act; or
- (b) an interest in a private company—
 - (i) subject to [section 14](#) of the Municipal Finance Management Act; and
 - (ii) if that transfer or disposal would not result in an infringement of [section 86C \(2\)](#) by another municipality which holds an interest in the company.

[[S. 86G](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

Part 3: Service utilities

[Part 3 inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86H. Establishment.—(1) A municipality may pass a by-law establishing a service utility.

(2) A by-law establishing a service utility must—

- (a) state the purpose for which the service utility is established;
- (b) confer the powers and impose the duties on the service utility which are necessary for the attainment of such purpose;
- (c) provide for—
 - (i) a board of directors to manage the service utility;
 - (ii) the number of directors to be appointed;
 - (iii) the appointment of directors, the filling of vacancies and the replacement and recall of directors by the parent municipality;
 - (iv) the terms and conditions of appointment of directors;
 - (v) the appointment of a chairperson;
 - (vi) the operating procedures of the board of directors;
 - (vii) the delegation of powers and duties to the board of directors;
 - (viii) any other matter necessary for the proper functioning of the board of directors;
 - (ix) the acquisition of infrastructure, goods, services, supplies or equipment by the service utility, or the transfer of infrastructure, goods, services, supplies or equipment to the service utility;
 - (x) the appointment of staff by the service utility, or the transfer or secondment of staff to the service utility in accordance with applicable labour legislation;
 - (xi) the terms and conditions on which any acquisition, transfer, appointment or secondment is made;
 - (xii) the governance of the service utility; and
 - (xiii) any other matter necessary for the proper functioning of the service utility; and
- (d) determine budgetary and funding arrangements for implementation of the by-law.

(3) A by-law made in terms of this section must be consistent with this Act and the Local Government: Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#)).

[[Sub-s. \(3\)](#) inserted by [s. 16](#) of [Act No. 19 of 2008](#).]

(4) No by-law may confer on a service utility any functions or powers falling outside the competence of the parent municipality contemplated by [section 8](#).

[[S. 86H](#) inserted by [s. 18](#) of [Act No. 44 of 2003](#).]

86I. Legal status of service utilities.—(1) A service utility is a juristic person and a municipal entity under the sole control of the municipality which established it.

(2) A service utility—

- (a) must restrict its activities to the purpose for which it was established; and
- (b) has no competence to perform any activity which falls outside its functions or powers in terms of a by-law of the municipality.
[S. 86I inserted by s. 18 of Act No. 44 of 2003.]

86J. Conditions precedent for establishing service utilities.—(1) A municipality may establish a service utility only—

- (a) for the purpose of utilising the service utility as a mechanism to assist the municipality in the performance of any of its functions or powers referred to in [section 8](#);
 - (b) if the municipality can demonstrate—
 - (i) that that function or power could be performed more efficiently by a separate structure in order to achieve the strategic objectives of the municipality; and
 - (ii) that the service utility would benefit the local community; and
 - (c) if all other conditions that may be prescribed have been complied with.
- (2) If a municipality establishes a service utility for the purpose of using that service utility as a mechanism to provide a municipal service, [Chapter 8](#) applies.
[S. 86J inserted by s. 18 of Act No. 44 of 2003.]

86K. Disestablishment of service utilities.—(1) A municipality may pass a by-law disestablishing a service utility which it has established.

- (2) If a service utility is disestablished—
 - (a) all assets, liabilities, rights and obligations of the service utility vest in the municipality; and
 - (b) staff of the service utility must be dealt with in accordance with applicable labour legislation.
[S. 86K inserted by s. 18 of Act No. 44 of 2003.]

Part 4: Multi-jurisdictional service utilities

[Heading inserted by s. 18 of Act No. 44 of 2003.]

87. Establishment of multi-jurisdictional service utilities.—Two or more municipalities, by written agreement, may establish a multi-jurisdictional service utility to perform any function or power envisaged by [section 8](#) in their municipal areas or in any designated parts of their municipal areas.

[S. 87 substituted by s. 19 of Act No. 44 of 2003.]

Wording of Sections

88. Minister requesting establishment of multi-jurisdictional service utilities.—(1) The Minister may, in the national interest and in consultation with the Cabinet member responsible for the functional area in question, request two or more municipalities to establish a multi-jurisdictional service utility to conform to the requirements of national legislation applicable to the provision of a specific municipal service.

[Sub-s. (1) substituted by s. 20 (b) of Act No. 44 of 2003.]

Wording of Sections

(2) The municipalities that receive a request in terms of [subsection \(1\)](#), must within two months of receiving such request decide whether to accede to the request, and convey their decision to the Minister.

[S. 88 amended by s. 20 (a) of Act No. 44 of 2003.]

Wording of Sections

89. Contents of agreements establishing multi-jurisdictional service utilities.—An agreement establishing a multi-jurisdictional service utility must describe the rights, obligations and responsibilities of the parent municipalities, and must—

- (a) determine the boundaries of the area for which the multi-jurisdictional service utility is established;
- (b) identify the municipal service or other function to be provided in terms of the agreement;
- (c)
- (d) determine budgetary and funding arrangements for implementation of the agreement;
- (e) provide for—
 - (i) a board of directors for the multi-jurisdictional service utility;
 - (ii) the appointment of directors by the respective parent municipalities, the filling of vacancies and the replacement and recall of directors;
 - (iii) the number of directors appointed by each parent municipality;
 - (iv) the terms and conditions of appointment of directors;
 - (v) the appointment of a chairperson;
 - (vi) the operating procedures of the board of directors;
 - (vii) the delegation of powers and duties to the board of directors; and
 - (viii) any other matter relating to the proper functioning of the board of directors;
- (f) provide for—
 - (i) the acquisition of infrastructure, goods, services, supplies or equipment by the multi-jurisdictional service utility, or the transfer of infrastructure, goods, services, supplies or equipment to the multi-jurisdictional service utility;
 - (ii) the appointment of staff by the multi-jurisdictional service utility, or the transfer or secondment of staff to the multi-jurisdictional service utility in accordance with applicable labour legislation; and

- (iii) the terms and conditions on which any acquisition, transfer, appointment or secondment is made;
- (g) determine the conditions for, and consequences of, the withdrawal from the agreement of a parent municipality;
- (h) determine the conditions for, and consequences of, the termination of the agreement, including—
 - (i) the method and schedule for winding-up the operations of the multi-jurisdictional service utility;
 - (ii) the distribution of the proceeds; and
 - (iii) the allocation among the parent municipalities of any assets and liabilities; and
- (j) provide for—
 - (i) the governing of the multi-jurisdictional service utility;
 - (ii) compulsory written reports regarding the activities and performance of the multi-jurisdictional service utility to a parent municipality;
 - (iii) information that may be requested from the multi-jurisdictional service utility by a parent municipality;
 - (iv) the amendment of the agreement; and
 - (v) any other matter necessary for the proper functioning of the multi-jurisdictional service utility.

[S. 89 substituted by s. 21 of Act No. 44 of 2003.]

Wording of Sections

90. Legal status of multi-jurisdictional service utilities.—(1) A multi-jurisdictional service utility is a juristic person, and a municipal entity under the shared control of the parent municipalities.

(2) A multi-jurisdictional service utility—

- (a) must restrict its activities to the object for which it was established; and
- (b) has no competence to perform any activity which falls outside its functions in terms of the agreement referred to in [section 87](#).

[S. 90 substituted by s. 22 of Act No. 44 of 2003.]

Wording of Sections

91.

[S. 91 repealed by s. 23 of Act No. 44 of 2003.]

Wording of Sections

92. Control of multi-jurisdictional service utilities.—(1) A multi-jurisdictional service utility—

- (a) is accountable to the parent municipalities; and
- (b) must comply with the Municipal Finance Management Act.

(2) A parent municipality—

- (a) is entitled to receive such regular written reports from the multi-jurisdictional service utility with respect to its activities and performance, as may be set out in the agreement establishing the multi-jurisdictional service utility;
- (b) may request the multi-jurisdictional service utility to furnish it with such information regarding its activities as the parent municipality may reasonably require; and
- (c) may appoint a nominee to inspect, at any time during normal business hours, the books, records, operations and facilities of the multi-jurisdictional service utility, and those of its contractors relating to the performance of the function or power for which the multi-jurisdictional service utility is established.

[S. 92 substituted by s. 24 of Act No. 44 of 2003.]

Wording of Sections

93. Termination of multi-jurisdictional service utilities.—A multi-jurisdictional service utility terminates—

- (a) automatically, when there is only one remaining parent municipality;
- (b) by written agreement among all of the parent municipalities; or
- (c) upon the termination date or the fulfilment of any condition for termination contained in the agreement establishing the multi-jurisdictional service utility.

[S. 93 substituted by s. 25 of Act No. 44 of 2003.]

Wording of Sections

Part 5: Duties and responsibilities of parent municipalities

[Part 5 inserted by s. 26 of Act No. 44 of 2003.]

93A. Duties of parent municipalities with respect to municipal entities.—The parent municipality of a municipal entity—

- (a) must exercise any shareholder, statutory, contractual or other rights and powers it may have in respect of the municipal entity to ensure that—
 - (i) both the municipality and the municipal entity comply with this Act, the Municipal Finance Management Act and any other applicable legislation; and
 - (ii) the municipal entity is managed responsibly and transparently, and meets its statutory, contractual and other obligations;
- (b) must allow the board of directors and chief executive officer of the municipal entity to fulfil their responsibilities; and
- (c) must establish and maintain clear channels of communication between the municipality and the municipal entity.

[S. 93A inserted by s. 26 of Act No. 44 of 2003.]

93B. Parent municipalities having sole control.—A parent municipality which has sole control of a municipal entity, or effective control in the case of a municipal entity which is a private company—

- (a) must ensure that annual performance objectives and indicators for the municipal entity are established by agreement with the municipal entity and included in the municipal entity's multi-year business plan in accordance with section 87 (5) (d) of the Municipal Finance Management Act;
- (b) must monitor and annually review, as part of the municipal entity's annual budget process as set out in [section 87](#) of the Municipal Finance Management Act, the performance of the municipal entity against the agreed performance objectives and indicators; and
- (c) may liquidate and disestablish the municipal entity—
 - (i) following an annual performance review, if the performance of the municipal entity is unsatisfactory;
 - (ii) if the municipality does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or
 - (iii) if the municipality has terminated the service delivery agreement or other agreement it had with the municipal entity.

[S. 93B inserted by s. 26 of Act No. 44 of 2003.]

93C. Parent municipalities having shared control.—Parent municipalities that have shared control of a municipal entity—

- (a) must enter into a mutual agreement determining and regulating—
 - (i) their mutual relationships in relation to the municipal entity;
 - (ii) the exercise of any shareholder, contractual or other rights and powers they may have in respect of the municipal entity;
 - (iii) the exercise of their powers and functions in terms of this Act and the Municipal Finance Management Act with respect to the municipal entity;
 - (iv) measures to ensure that annual performance objectives and indicators for the municipal entity are established by agreement with the municipal entity and included in the municipal entity's multi-year business plan in accordance with section 87 (5) (d) of the Municipal Finance Management Act;
 - (v) the monitoring and annual review, as part of the municipal entity's annual budget process as set out in [section 87](#) of the Municipal Finance Management Act, of the performance of the municipal entity against the established performance objectives and indicators;
 - (vi) the payment of any monies by the municipalities to the municipal entity or by the municipal entity to the municipalities;
 - (vii) procedures for the resolution of disputes between those municipalities;
 - (viii) procedures governing conditions for and consequences of withdrawal from the municipal entity by a municipality;
 - (ix) procedures for terminating the appointment and utilisation of the municipal entity as a mechanism for the performance of a municipal function;
 - (x) the disestablishment of the municipal entity, the division, transfer or liquidation of its assets and the determination of the responsibility for its liabilities; and
 - (xi) any other matter that may be prescribed; and
- (b) may liquidate and disestablish the municipal entity—
 - (i) following an annual performance review, if the performance of the municipal entity is unsatisfactory;
 - (ii) if the municipality does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or
 - (iii) if the municipality has terminated the service delivery agreement or other agreement it had with the municipal entity.

[S. 93C inserted by s. 26 of Act No. 44 of 2003.]

93D. Municipal representatives.—(1) The council of a parent municipality must designate a councillor or an official of the parent municipality, or both, as the representative or representatives of the parent municipality—

- (a) to represent the parent municipality as a non-participating observer at meetings of the board of directors of the municipal entity concerned; and
- (b) to attend shareholder meetings and to exercise the parent municipality's rights and responsibilities as a shareholder, together with such other councillors or officials that the council may designate as representatives.

(2) (a) The official lines of communications between a municipal entity and the parent municipality exist between the chairperson of the board of directors of the municipal entity and the mayor or executive mayor, as the case may be, of the parent municipality.

(b) The mayor or executive mayor, as the case may be, of a parent municipality may at any time call or convene any meeting of shareholders or other general meeting comprising the board of directors of the municipal entity concerned and the representatives of the parent municipality, in order for the board of directors to give account for actions taken by it.

(c) The council of a parent municipality may determine the reporting responsibilities of a municipal representative referred to in [subsection \(1\) \(a\)](#) or [\(b\)](#).

(3) (a) A municipal representative referred to in [subsection \(1\) \(b\)](#), must represent the parent municipality faithfully at shareholder meetings, without consideration of personal interest or gain, and must keep the council informed of—

- (i) how voting rights were exercised; and
- (ii) all relevant actions taken on behalf of the municipality by the representative.

(b) A municipal representative referred to in [subsection \(1\) \(a\)](#) or [\(b\)](#)—

- (i) must act in accordance with the instructions of the council; and
- (ii) may be reimbursed for expenses in connection with his or her duties as a municipal representative, but may not receive any additional compensation or salary for such duties.

[S. 93D inserted by s. 26 of Act No. 44 of 2003.]

Part 6: Governance of municipal entities

[Part 6 inserted by s. 26 of Act No. 44 of 2003.]

93E. Appointment of directors.—(1) The board of directors of a municipal entity—

- (a) must have the requisite range of expertise to effectively manage and guide the activities of the municipal entity;
 - (b) must consist of at least a third non-executive directors; and
 - (c) must have a non-executive chairperson.
- (2) The parent municipality of a municipal entity must, before nominating or appointing a director, establish a process through which—
- (a) applications for nomination or appointment are widely solicited;
 - (b) a list of all applicants and any prescribed particulars concerning applicants is compiled; and
 - (c) the municipal council makes the appointment or nomination from such list.

[S. 93E inserted by s. 26 of Act No. 44 of 2003.]

93F. Disqualifications.—(1) A person is not eligible to be a director of a municipal entity if he or she—

- (a) holds office as a councillor of any municipality;
- (b) is a member of the National Assembly or a provincial legislature;
- (c) is a permanent delegate to the National Council of Provinces;
- (d) is an official of the parent municipality of that municipal entity;
- (e) was convicted of any offence and sentenced to imprisonment without the option of a fine, and a period of five years since completion of the sentence has not lapsed;
- (f) has been declared by a court to be of unsound mind; or
- (g) is an unrehabilitated insolvent.

(2) If a director of a municipal entity during that person's term of office becomes disqualified on a ground mentioned in [subsection \(1\)](#), such person ceases to be a director from the date of becoming disqualified.

[S. 93F inserted by s. 26 of Act No. 44 of 2003.]

93G. Removal or recall of directors.—The parent municipality of a municipal entity may remove or recall a director appointed or nominated by that municipality—

- (a) if the performance of the director is unsatisfactory;
- (b) if the director, either through illness or for any other reason, is unable to perform the functions of office effectively; or
- (c) if the director, whilst holding office—
 - (i) is convicted of fraud or theft or any offence involving fraudulent conduct; or
 - (ii) has failed to comply with or breached any legislation regulating the conduct of directors, including any applicable code of conduct.

[S. 93G inserted by s. 26 of Act No. 44 of 2003.]

93H. Duties of directors.—(1) The board of directors of a municipal entity must—

- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity;
- (b) ensure that it and the municipal entity comply with all applicable legislation and agreements;
- (c) communicate openly and promptly with the parent municipality of the municipal entity; and
- (d) deal with the parent municipality of the municipal entity in good faith.

(2) A director must—

- (a) disclose to the board of directors, and to the representative of the parent municipality, any direct or indirect personal or business interest that the director or his or her spouse or partner may have in any matter before the board, and must withdraw from the proceedings of the board when that matter is considered, unless the board decides that the director's direct or indirect interest in the matter is trivial or irrelevant; and
- (b) at all times act in accordance with the Code of Conduct for directors referred to in [section 93L](#).

[S. 93H inserted by s. 26 of Act No. 44 of 2003.]

93I. Meetings of board of directors.—(1) Meetings of the board of directors of a municipal entity must be open to the municipal representatives referred to in [section 93D \(1\) \(a\)](#).

(2) Municipal representatives referred to in [section 93D \(1\) \(a\)](#) have non-participating observer status in a meeting of the board of directors of a municipal entity.

[S. 93I inserted by s. 26 of Act No. 44 of 2003.]

93J. Appointment of chief executive officer.—(1) The board of directors of a municipal entity must appoint a chief executive officer of the municipal entity.

(2) The chief executive officer of a municipal entity is accountable to the board of directors for the management of the municipal entity.

[S. 93J inserted by s. 26 of Act No. 44 of 2003.]

Part 7: General

[Part 7 inserted by s. 26 of Act No. 44 of 2003.]

93K. Establishment of and acquisition of interests in corporate bodies disallowed.—(1) A municipal entity may not—

- (a) establish or participate in the establishment of a company or any other corporate body, including a trust; or
 - (b) acquire or hold an interest in a company or any other corporate body, including a trust.
- (2) [Subsection \(1\)](#) does not apply to—
- (a) the acquisition by a municipal entity of securities in a company listed on the Johannesburg Securities Exchange for investment purposes, subject to any applicable provisions of the Municipal Finance Management Act; or
 - (b) a fund for the benefit of employees of a municipal entity in terms of a law regulating pensions or medical aid schemes.
[S. 93K inserted by s. 26 of [Act No. 44 of 2003](#).]

93L. Code of Conduct for directors and members of staff of municipal entity.—(1) (a) The Code of Conduct for councillors contained in [Schedule 1](#) applies, with the necessary changes, to directors of a municipal entity.

(b) In the application of [item 14](#) of [Schedule 1](#) to directors of a municipal entity, that item must be regarded as providing as follows:

“**14. Breaches of Code.**—(1) The board of directors of a municipal entity may—

- (a) investigate and make a finding on any alleged breach of a provision of this Code by a director; or
- (b) establish a special committee—
 - (i) to investigate and make a finding on any alleged breach of a provision of this Code by a director; or
 - (ii) to make appropriate recommendations to the board of directors.

(2) If the board of directors or special committee finds that a director has breached a provision of this Code, the board of directors may—

- (a) issue a formal warning to the director;
- (b) reprimand the director;
- (c) fine the director; or
- (d) recommend to the parent municipality that the director be removed or recalled in terms of [section 93G](#).

(3) The board of directors of a municipal entity must inform a parent municipality of that entity of any action taken against a director in terms of [subsection \(2\)](#).”.

(2) The Code of Conduct for municipal staff members contained in [Schedule 2](#) applies, with the necessary changes, to members of staff of a municipal entity.

(3) For purposes of this section, any reference in [Schedule 1](#) or [2](#) to a “councillor”, “MEC for local government in the province”, “municipal council”, “municipality” and “rules and orders” must, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a director of a municipal entity, parent municipality, board of directors, municipal entity and procedural rules, respectively.

[S. 93L inserted by s. 26 of [Act No. 44 of 2003](#).]

94.

[S. 94 repealed by s. 27 of [Act No. 44 of 2003](#).]

Wording of Sections

CHAPTER 9 CREDIT CONTROL AND DEBT COLLECTION

95. Customer care and management.—In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity—

- (a) establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider;
- (b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider;
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
- (d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;
- (e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- (f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
- (g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- (h) provide mechanisms to monitor the response time and efficiency in complying with [paragraph \(g\)](#); and
- (i) provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services.

96. Debt collection responsibility of municipalities.—A municipality—

- (a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and
- (b) for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act.

97. Contents of policy.—(1) A credit control and debt collection policy must provide for—

- (a) credit control procedures and mechanisms;
- (b) debt collection procedures and mechanisms;

- (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
- (d) realistic targets consistent with—
 - (i) general recognised accounting practices and collection ratios, and
 - (ii) the estimates of income set in the budget it less an acceptable provision for bad debts;
- (e) interest on arrears, where appropriate;
- (f) extensions of time for payment of accounts;
- (g) termination of services or the restriction of the provision of services when payments are in arrears;
- (h) matters relating to unauthorised consumption of services, theft and damages; and
- (i) any other matters that may be prescribed by regulation in terms of [section 104](#).

(2) A credit control and debt collection policy may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

98. By-laws to give effect to policy.—(1) A municipal council must adopt by-laws to give effect to the municipality’s credit control and debt collection policy, its implementation and enforcement.

(2) By-laws in terms of [subsection \(1\)](#) may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

99. Supervisory authority.—A municipality’s executive committee or executive mayor or, if a municipality does not have an executive committee or executive mayor, the municipal council itself or a committee appointed by it, as the supervisory authority must—

- (a) oversee and monitor—
 - (i) the implementation and enforcement of the municipality’s credit control and debt collection policy and any by-laws enacted in terms of [section 98](#); and
 - (ii) the performance of the municipal manager in implementing the policy and any by-laws;
- (b) when necessary, evaluate or review the policy and any by-laws, or the implementation of the policy and any such by-laws, in order to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and
- (c) at such intervals as may be determined by the council report to a meeting of the council, except when the council itself performs the duties mentioned in [paragraphs \(a\)](#) and [\(b\)](#).

100. Implementing authority.—The municipal manager or service provider must—

- (a) implement and enforce the municipality’s credit control and debt collection policy and any by-laws enacted in terms of [section 98](#);
- (b) in accordance with the credit control and debt collection policy and any such by-laws, establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the municipality; and
- (c) at such intervals as may be determined by the council report the prescribed particulars to a meeting of the supervisory authority referred to in [section 99](#).

101. Municipality’s right of access to premises.—The occupier of premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable hours to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.

102. Accounts.—(1) A municipality may—

- (a) consolidate any separate accounts of persons liable for payments to the municipality;
- (b) credit a payment by such a person against any account of that person; and
- (c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

(2) [Subsection \(1\)](#) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.

(3) A municipality must provide an owner of a property in its jurisdiction with copies of accounts sent to the occupier of the property for municipal services supplied to such a property if the owner requests such accounts in writing from the municipality concerned.

[[Sub-s. \(3\)](#) added by [s. 17](#) of [Act No. 19 of 2008](#).]

103. Agreements with employers.—A municipality may—

- (a) with the consent of a person liable to the municipality for the payment of rates or other taxes, or fees for municipal services, enter into an agreement with that person’s employer to deduct from the salary or wages of that person—
 - (i) any outstanding amounts due by that person to the municipality; or
 - (ii) regular monthly amounts as may be agreed; and
- (b) provide special incentives for—
 - (i) employers to enter into such agreements; and
 - (ii) employees to consent to such agreements.

104. Regulations and guidelines.—(1) The Minister may for the purposes of this Chapter make regulations or issue guidelines in accordance with [section 120](#) to provide for or regulate the following matters:

- (a) the particulars that must be contained in the municipal manager's report in terms of [section 100 \(c\)](#);
 - (b) the identification of municipal services provided by the municipality or other service providers to users of services where the use of the service by the user can reasonably be determined, measured or estimated per quantity used or per frequency of such use;
 - (c) the determination, measurement or estimate of the use by each user of each service so identified;
 - (d) user agreements, and deposits and bank guarantees for the provision of municipal services;
 - (e) the rendering of accounts to ratepayers and users and the particulars to be contained in the accounts;
 - (f) the action that may be taken by municipalities and service providers to secure payment of accounts that are in arrear, including—
 - (i) the termination of municipal services or the restriction of the provision of services;
 - (ii) the seizure of property;
 - (iii) the attachment of rent payable on a property; and
 - (iv) the extension of liability to a director, a trustee or a member if the debtor is a company, a trust or a close corporation;
 - (g) appeals against the accuracy of accounts for municipal taxes or services;
 - (h) the manner in and time within which such appeals must be lodged and determined and the consequences of successful and unsuccessful appeals;
 - (i) extensions for the payment of arrears and interest payable in respect of such arrears;
 - (j) service connections and disconnections, and the resumption of discontinued services;
 - (k) the combating of unauthorised consumption, connection and reconnection and theft of municipal services;
 - (l) the development and implementation of an indigent policy;
 - (m) the tampering with or theft of meters, service supply equipment and reticulation network and any other fraudulent activity in connection with the provision of municipal services; and
 - (n) any other matter that may facilitate—
 - (i) effective and efficient systems of credit control and debt collection by municipalities; or
 - (ii) the application of this Chapter.
- (2) When making regulations or issuing guidelines in terms of [section 120](#) to provide for or to regulate the matters mentioned in [subsection \(1\)](#) of this section, the Minister must—
- (a) take into account the capacity of municipalities to comply with those matters; and
 - (b) differentiate between different kinds of municipalities according to their respective capacities.

CHAPTER 10
PROVINCIAL AND NATIONAL MONITORING AND STANDARD SETTING

Part 1: Provincial monitoring

105. Provincial monitoring of municipalities.—(1) The MEC for local government in a province must establish mechanisms processes and procedures in terms of [section 155 \(6\)](#) of [the Constitution](#) to—

- (a) monitor municipalities in the province in managing their own affairs, exercising their powers and performing their functions;
- (b) monitor the development of local government capacity in the province; and
- (c) assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their functions.

(2) The MEC for local government in a province may by notice in the *Provincial Gazette* require municipalities of any category or type specified in the notice or of any other kind described in the notice, to submit to a specified provincial organ of state such information as may be required in the notice, either at regular intervals or within a period as may be specified.

(3) When exercising their powers in terms of [subsection \(1\)](#) MECs for local government—

- (a) must rely as far as is possible on annual reports in terms of [section 46](#) and information submitted by municipalities in terms of [subsection \(2\)](#); and
- (b) may make reasonable requests to municipalities for additional information after taking into account—
 - (i) the administrative burden on municipalities to furnish the information;
 - (ii) the cost involved; and
 - (iii) existing performance monitoring mechanisms, systems and processes in the municipality.

106. Non-performance and maladministration.—(1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must—

- (a) by written notice to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; or
- (b) if the MEC considers it necessary, designate a person or persons to investigate the matter.

(2) In the absence of applicable provincial legislation, the provisions of [sections 2, 3, 4, 5 and 6](#) of the Commissions Act, 1947 ([Act No. 8 of 1947](#)), and the regulations made in terms of that Act apply, with the necessary changes as the context may require, to an investigation in terms of [subsection \(1\) \(b\)](#).

(3) (a) An MEC issuing a notice in terms of [subsection \(1\) \(a\)](#) or designating a person to conduct an investigation in terms of [subsection \(1\) \(b\)](#), must within 14 days submit a written statement to the National Council of Provinces motivating the action.

(b) A copy of the statement contemplated in [paragraph \(a\)](#) must simultaneously be forwarded to the Minister and to the Minister of Finance.

[Sub-s. (3) substituted by [s. 18 \(b\)](#) of [Act No. 19 of 2008](#).]

Wording of Sections

(4) (a) The Minister may request the MEC to investigate maladministration, fraud, corruption or any other serious malpractice which, in the opinion of the

Minister, has occurred or is occurring in a municipality in the province.

(b) The MEC must table a report detailing the outcome of the investigation in the relevant provincial legislature within 90 days from the date on which the Minister requested the investigation and must simultaneously send a copy of such report to the Minister, the Minister of Finance and the National Council of Provinces.

[Sub-s. (4) added by s. 18 (c) of Act No. 19 of 2008.]

(5) (a) Where an MEC fails to conduct an investigation within 90 days, notwithstanding a request from the Minister in terms of [subsection \(4\) \(a\)](#), the Minister may in terms of this section conduct such investigation.

(b) The Minister must send a report detailing the outcome of the investigation referred to in [paragraph \(a\)](#) to the President.

[Sub-s. (5) inserted by s. 12 of Act No. 7 of 2011.]

Part 2: National monitoring and standard setting

107. Furnishing of information.—The Minister, by notice in the *Gazette*, may require municipalities of any category or type specified in the notice, or of any other kind described in the notice, to submit to a specified national organ of state such information concerning their affairs as may be required in the notice, either at regular intervals or within a period as may be specified.

108. Essential national and minimum standards.—(1) Except where otherwise provided for by an Act of Parliament, the Minister may, by notice in the *Gazette*, establish essential national standards and minimum standards for any municipal service or for any matter assigned to municipalities in terms of [section 156 \(1\) of the Constitution](#), after consulting—

- (a) the Minister of Finance;
- (b) organised local government representing local government nationally;
- (c) the MECs for local government; and
- (d) any Cabinet member responsible for regulating that service.

(2) A Cabinet member, after consulting the Minister, may exercise the power contained in [subsection \(1\)](#) in relation to a municipal service or matter falling within the functional area for which that Cabinet member is responsible.

(3) Standards established in terms of [subsection \(1\)](#) may distinguish between different categories, types and kinds of municipalities.

(4) Draft standards in terms of [subsection \(1\)](#) or [\(2\)](#) must be published for public comment in the *Gazette* before their enactment.

(5) When establishing standards in terms of [subsection \(1\)](#) or [\(2\)](#), the Minister or other Cabinet member must—

- (a) take into account the capacity of municipalities to comply with those standards; and
- (b) differentiate between different kinds of municipalities according to their respective capacities.

CHAPTER 11 LEGAL MATTERS

109. Legal proceedings.—(1)

[Sub-s. (1) deleted by s. 2 (1) of Act No. 40 of 2002.]

Wording of Sections

(2) A municipality may compromise or compound any action, claim or proceedings, and may submit to arbitration any matter other than a matter involving a decision on its status, powers or duties or the validity of its actions or by-laws.

109A. Legal representation for employees or councillors of municipality.—A municipality may, subject to such terms and conditions as it may determine, provide an employee or councillor of the municipality with legal representation where—

- (a) legal proceedings have been instituted against the employee or councillor as a result of any act or omission by the employee or councillor in the exercise of his or her powers or the performance of his or her duties; or
- (b) the employee or the councillor has been summoned to attend any inquest or inquiry arising from the exercise of his or her powers or the performance of his or her duties.

[S. 109A inserted by s. 43 of Act No. 51 of 2002.]

110. Certain certificates to be evidence.—In legal proceedings against a municipality, a certificate which purports to be signed by a staff member of the municipality and which claims that the municipality used the best known, or the only, or the most practicable and available methods in exercising any of its powers or performing any of its functions, must on its mere production by any person be accepted by the court as evidence of that fact.

111. Copy of Provincial Gazette as evidence.—A copy of the *Provincial Gazette* in which a by-law was published, may on its mere production in a court by any person, be used as evidence that that by-law was passed by a municipality concerned.

112. Prosecution of offences.—A staff member of a municipality authorised in terms of [section 22 \(8\) \(b\)](#) of the National Prosecuting Authority Act, 1998 ([Act No. 32 of 1998](#)), to conduct prosecutions, may institute criminal proceedings and conduct the prosecution in respect of a contravention of or failure to comply with a provision of—

- (a) a by-law or regulation of the municipality;
- (b) other legislation administered by the municipality; or
- (c) other legislation as the National Director of Public Prosecutions may determine in terms of [section 22 \(8\) \(b\)](#) of the National Prosecuting Authority Act, 1998.

113. Fines and bail.—Fines and estreated bails recovered in respect of offences or alleged offences referred to in item 2 of [Schedule 4](#) to the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), must be paid into the revenue fund of the municipality.

114. Time of notices and payments.—Normal or extended office hours is the only time—

- (a) a payment may be made at a municipality, except when payment is made by electronic transfer or at agency pay-points; or
- (b) any notice or other document may be served on the municipality, including on its council, or other structure or functionary or a staff member in an official capacity, except when the matter in connection with which a summons is served is an urgent matter.

115. Service of documents and process.—(1) Any notice or other document that is served on a person in terms of this Act or by a municipality in terms of any other legislation is regarded as having been served—

- (a) when it has been delivered to that person personally;
- (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
- (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgement of the posting thereof from the postal service is obtained;
- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by [paragraphs \(a\), \(b\) or \(c\)](#); or
- (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates.

[[Sub-s. \(1\)](#) amended by [s. 94](#) of [Act No. 6 of 2004](#).]

Wording of Sections

(2) When any notice or other document must be authorised or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

(3) Any legal process is effectively and sufficiently served on a municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

116. Public servitudes.—Public servitudes in favour of a municipality are under the control of the municipality which must protect and enforce the rights of the local community arising from those servitudes.

117. Custody of documents.—Except where otherwise provided, all records and documents of a municipality are in the custody of the municipal manager.

118. Restraint on transfer of property.—(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate—

- (a) issued by the municipality or municipalities in which that property is situated; and
 - (b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.
- (1A) A prescribed certificate issued by a municipality in terms of [subsection \(1\)](#) is valid for a period of 60 days from the date it has been issued.

[[Sub-s. \(1A\)](#) amended by [s. 19](#) of [Act No. 19 of 2008](#).]

Wording of Sections

(2) In the case of the transfer of property by a trustee of an insolvent estate, the provisions of this section are subject to [section 89](#) of the Insolvency Act, 1936 ([Act No. 24 of 1936](#)).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

(4) [Subsection \(1\)](#) does not apply to—

- (a) a transfer from the national government, a provincial government or a municipality of a residential property which was financed with funds or loans made available by the national government, a provincial government or a municipality; and
- (b) the vesting of ownership as a result of a conversion of land tenure rights into ownership in terms of Chapter 1 of the Upgrading of Land Tenure Rights Act, 1991 ([Act No. 112 of 1991](#)):

Provided that nothing in this subsection precludes the subsequent collection by a municipality of any amounts owed to it in respect of such a property at the time of such transfer or conversion.

(5) [Subsection \(3\)](#) does not apply to any amount referred to in that subsection that became due before a transfer of a residential property or a conversion of land tenure rights into ownership contemplated in [subsection \(4\)](#) took place.

[[S. 118](#) substituted by [s. 44](#) of [Act No. 51 of 2002](#).]

Wording of Sections

CHAPTER 12 MISCELLANEOUS

119. Offences and penalties.—(1) A councillor who attempts to influence the municipal manager or any other staff member or an agent of a municipality not to enforce an obligation in terms of this Act, any other applicable legislation or any by-law or a decision of the council of the municipality, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

(2) A municipal manager or other staff member of a municipality who accedes to an attempt mentioned in [subsection \(1\)](#), is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

(3) A person who contravenes [section 101](#) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(4) A person convicted of an offence and sentenced to more than 12 month's imprisonment without the option of a fine, is disqualified to remain a councillor of the municipality concerned and to become a councillor of any municipality during a period of five years as from the conviction.

120. Regulations and guidelines.—(1) The Minister may, by notice in the *Gazette* and after consultation with organised local government representing local government nationally, make regulations or issue guidelines not inconsistent with this Act concerning—

- (a) the matters listed in [sections 22, 37, 49, 54A, 56, 72, 86A and 104](#);
[Para. (a) substituted by s. 28 of [Act No. 44 of 2003](#) and by s. 12 of [Act No. 7 of 2011](#).]

Wording of Sections

- (b) any matter that may be prescribed in terms of this Act; and
(c) any matter that may facilitate the application of this Act.

(2) Regulations and guidelines made or issued in terms of [subsection \(1\)](#) may differentiate between—

- (a) different kinds of municipalities which may, for the purposes of the regulations, be defined in the regulations either in relation to categories or types of municipalities or in any other way;
(b) different categories of municipal services;
(c) different categories of service providers;
(d) ratepayers, users of services, debtors and other categories of persons; or
(e) different categories of ratepayers, users of services or debtors as long as the differentiation does not amount to unfair discrimination.

(3) Regulations in terms of [subsection \(1\)](#) may prescribe penalties for the contravention of or non-compliance with any specific provisions of the regulations, which may include an appropriate fine and imprisonment not exceeding six months.

(4) Draft regulations and guidelines must be published in the *Gazette* for public comment before their enactment in terms of [subsection \(1\)](#).

(5) The absence of a regulation or guideline that may be prescribed in terms of this Act does not prevent—

- (a) the application of a provision of this Act in connection with which the regulation or guideline may be prescribed; or
(b) the performance of a function or the exercise of a power assigned in such a provision.

(6) (a) Guidelines issued in terms of [subsection \(1\)](#) are not binding.

(b) Compliance with guidelines issued in terms of [subsection \(1\)](#) may be taken into account in the determination of inter-governmental financial policies and arrangements.

(7) Regulations made in terms of this section—

- (a) must be submitted to Parliament at least 30 days before their publication in the *Gazette*; and
(b) take effect on a date determined in the regulations, which must be the date of publication or a date after such publication.

121. Amendment of legislation.—The legislation mentioned in [Schedule 3](#) is hereby amended to the extent set out in that Schedule.

122. Transitional arrangements.—(1) Any written agreement referred to in [section 11 \(2\)](#) which existed immediately before this Act took effect, must be regarded as having been concluded in terms of that section.

(2) The Minister must—

- (a) initiate steps for the rationalisation of existing national and provincial planning legislation applicable to municipalities in order to facilitate local development planning as an integrated concept within the constitutional system of co-operative government envisaged in [section 41 of the Constitution](#); and
(b) establish mechanisms for facilitating co-ordination between sectoral regulation with respect to local government matters.

123. Phasing in of certain provisions of this Act.—(1) The Minister, by notice in the *Gazette*, may phase in the application of the provisions of this Act which place a financial or administrative burden on municipalities.

(2) A notice in terms of [subsection \(1\)](#) may—

- (a) determine different dates on which different provisions of this Act become applicable to municipalities;
(b) apply to all municipalities generally;
(c) differentiate between different kinds of municipalities which may, for the purpose of the phasing in of the relevant provisions, be defined in the notice in relation to categories or types of municipalities or in any other way; or
(d) apply to a specific kind of municipality only, as defined in the notice.

124. Short title and commencement.—This Act is called the Local Government: Municipal Systems Act, 2000, and takes effect on a date determined by the President by proclamation in the *Gazette*.

Schedule 1

CODE OF CONDUCT FOR COUNCILLORS

[Sch. 1 amended by ss. 45 and 46 of [Act No. 51 of 2002](#) and by ss. 20 and 21 of [Act No. 19 of 2008](#).]

Wording of Sections

Preamble.—Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in [section 19](#) of the Municipal Structures Act, the following Code of Conduct is established.

1. Definitions.—In this Schedule “partner” means a person who permanently lives with another person in a manner as if married.

2. General conduct of councillors.—A councillor must—

- (a) perform the functions of office in good faith, honestly and a transparent manner; and
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

2A. Voting at meetings.—A councillor may not vote in favour of or agree to a resolution which is before the council or a committee of the council which conflicts with any legislation applicable to local government.

[Item (2A) inserted by [s. 14](#) of [Act No. 7 of 2011](#).]

3. Attendance at meetings.—A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting.

4. Sanctions for non-attendance of meetings.—(1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:

- (a) not attending a meeting which that councillor is required to attend in terms of [item 3](#); or
- (b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of [item 3](#), must be removed from office as a councillor.

(3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

5. Disclosure of interests.—(1) A councillor must—

- (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
- (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.

(3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

6. Personal gain.—(1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.

(2)

[Sub-item (2) deleted by [s. 20 \(a\)](#) of [Act No. 19 of 2008](#).]

(3)

[Sub-item (3) deleted by [s. 20 \(a\)](#) of [Act No. 19 of 2008](#).]

(4) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

[Sub-item (4) added by [s. 20 \(b\)](#) of [Act No. 19 of 2008](#).]

7. Declaration of interests.—(1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:

- (a) shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business undertaking;
- (g) employment and remuneration;
- (h) interest in property;
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

8. Full-time councillors.—A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.

9. Rewards, gifts and favours.—A councillor may not request, solicit or accept any reward, gift or favour for—

- (a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
- (b) persuading the council or any committee in regard to the exercise of any power, function or duty;
- (c) making a representation to the council or any committee of the council; or
- (d) disclosing privileged or confidential information.

10. Unauthorised disclosure of information.—(1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item "privileged or confidential information" includes any information—

- (a) determined by the municipal council or committee to be privileged or confidential;
 - (b) discussed in closed session by the council or committee;
 - (c) disclosure of which would violate a person's right to privacy; or
 - (d) declared to be privileged, confidential or secret in terms of law.
- (3) This item does not derogate from the right of any person to access to information in terms of national legislation.

11. Intervention in administration.—A councillor may not, except as provided by law—

- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
- (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- (d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

12. Council property.—A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

12A. Councillor in arrears.—A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.

[Item 12A inserted by s. 45 of Act No. 51 of 2002.]

13. Duty of chairpersons of municipal councils.—(1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach;
- (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
- (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of [subitem \(1\) \(c\)](#) is open to the public.

(3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

14. Breaches of Code.—(1) A municipal council may—

- (a) investigate and make a finding on any alleged breach of a provision of this Code; or
- (b) establish a special committee—
 - (i) to investigate and make a finding on any alleged breach of this Code; and
 - (ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—

- (a) issue a formal warning to the councillor;
- (b) reprimand the councillor;
- (c) request the MEC for local government in the province to suspend the councillor for a period;
- (d) fine the councillor; and
- (e) request the MEC to remove the councillor from office.

(3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation as to the appropriate sanction in terms of subitem (2) if a municipal council does not conduct an investigation contemplated in subitem (1) and the MEC for local government considers it necessary.

[Sub-item (4) substituted by s. 21 of Act No. 19 of 2008.]

(5) The Commissions Act, 1947 ([Act No. 8 of 1947](#)), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).

[Sub-item (5) substituted by s. 46 of Act No. 51 of 2002.]

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—

- (a) suspend the councillor for a period and on conditions determined by the MEC; or
- (b) remove the councillor from office.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

15. Application of Code to traditional leaders.—(1) [Items 1, 2, 5, 6, 9 \(b\)](#) to [\(d\)](#), [10, 11, 12, 13](#) and [14 \(1\)](#) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of [section 81](#) of the Municipal Structures Act.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of [item 14 \(1\)](#) finds that a traditional leader has breached a provision of this Code, the council may—

- (a) issue a formal warning to the traditional leader; or
- (b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may—

- (a) suspend that right for a period and on conditions determined by the MEC; or
- (b) cancel that right.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of [section 81 \(3\)](#) of the Municipal Structures Act.

Schedule 2

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

[Sch. 2 amended by s. 29 of [Act No. 44 of 2003](#) and by ss. 22 and 23 of [Act No. 19 of 2008](#).]

Wording of Sections

1. Definitions.—In this Schedule “**partner**” means a person who permanently lives with another person in a manner as if married.

2. General conduct.—A staff member of a municipality must at all times—

- (a) loyally execute the lawful policies of the municipal council;
- (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- (c) act in such a way that the spirit, purport and objects of [section 50](#) are promoted;
- (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.

3. Commitment to serving the public interest.—A staff member of a municipality is a public servant in a developmental local system, and must accordingly

- (a) implement the provisions of [section 50 \(2\)](#);
- (b) foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- (c) promote and seek to implement the basic values and principles of public administration described in [section 195 \(1\)](#) of [the Constitution](#);
- (d) obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff member's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- (e) participate in the overall performance management system for the municipality, as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

4. Personal gain.—(1) A staff member of a municipality may not—

- (a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
- (b) take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.

(2) Except with the prior consent of the council of a municipality a staff member of the municipality may not—

(a)

[Para. (a) deleted by s. 22 (a) of [Act No. 19 of 2008](#).]

Wording of Sections

(b)

[Para. (b) deleted by s. 22 (a) of [Act No. 19 of 2008](#).]

Wording of Sections

(c) be engaged in any business, trade or profession other than the work of the municipality.

(3) No staff member of a municipality may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

[Sub-item (3) added by s. 22 (b) of [Act No. 19 of 2008](#).]

5. Disclosure of benefits.—(1) A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.

(2) This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

5A. Declaration of interests.—(1) A person appointed in terms of [section 56](#) or a municipal manager must within 60 days after his or her appointment declare in writing to the chairperson of the municipal council the following interests held by that person or municipal manager:

- (a) Shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business undertaking;
- (g) interest in property; and
- (h) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a staff member must be declared in writing quarterly to the chairperson of the municipal council.

(3) The municipal council must determine which of the financial interests referred to in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

[Item 5A inserted by s. 23 of Act No. 19 of 2008.]

6. Unauthorised disclosure of information.—(1) A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorised person.

(2) For the purpose of this item “privileged or confidential information” includes any information—

- (a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;
- (b) discussed in closed session by the council or a committee of the council;
- (c) disclosure of which would violate a person’s right to privacy; or
- (d) declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person’s right of access to information in terms of national legislation.

7. Undue influence.—A staff member of a municipality may not—

- (a) unduly influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;
- (b) mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or
- (c) be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

8. Rewards, gifts and favours.—(1) A staff member of a municipality may not request, solicit or accept any reward, gift or favour for —

- (a) persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
- (b) making a representation to the council, or any structure or functionary of the council;
- (c) disclosing any privileged or confidential information; or
- (d) doing or not doing anything within that staff member’s powers or duties.

(2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of subitem (1).

9. Council property.—A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

10. Payment of arrears.—A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member’s salary after this period.

11. Participation in elections.—A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

12. Sexual harassment.—A staff member of a municipality may not embark on any action amounting to sexual harassment.

13. Reporting duty of staff members.—Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.

14. Breaches of Code.—Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in [section 67 \(1\) \(h\)](#) of this Act.

14A. Disciplinary steps.—(1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.

(2) Such other disciplinary steps may include—

- (a) suspension without pay for no longer than three months;
- (b) demotion;
- (c) transfer to another post;
- (d) reduction in salary, allowances or other benefits; or
- (e) an appropriate fine.

[Item 14A inserted by s. 29 of Act No. 44 of 2003.]

Schedule 3 LEGISLATION AMENDED

1. Repeals [sections 31 and 32](#) of, and [Schedule 5](#) to, the *Municipal Structures Act, No. 117 of 1998*.
2. Amends [section 27](#) of the *Municipal Structures Act, No. 117 of 1998*, by substituting paragraph (d).
3. Amends [section 81](#) of the *Municipal Structures Act, No. 117 of 1998*, by substituting [subsection \(5\)](#).
4. Amends [section 82](#) of the *Municipal Structures Act, No. 117 of 1998*, by adding subsection (2), the existing section becoming subsection (1).
5. Amends [Schedule 4](#) of the *Public Finance Management Act, No. 1 of 1999*, by adding [item 2](#).

LOCAL GOVERNMENT LAWS AMENDMENT ACT NO. 51 OF 2002

[ASSENTED TO 4 DECEMBER, 2002]
[DATE OF COMMENCEMENT: 5 DECEMBER, 2002]

ACT

To amend the Organised Local Government Act, 1997, so as to repeal a transitional arrangement; to amend the Remuneration of Public Office Bearers Act, 1998, so as to effect a technical amendment; to validate certain determinations and payments; to amend the Local Government: Municipal Demarcation Act, 1998, so as to effect technical corrections; to further regulate the functions and the work programme of the Board; to reduce the size of the Demarcation Board; to expressly provide for the Minister's role in the appointment of members of the Demarcation Board; and to make express provision for the publication of the Demarcation Board's decision where an objection was considered; to amend the Local Government: Municipal Structures Act, 1998, so as to effect technical corrections to the Afrikaans text; to make provision for an acting mayor and an acting executive mayor; to provide for the payment of out of pocket expenses to traditional leaders who participate in the proceedings of municipal councils; to authorise the Minister to regulate the consequences of the revocation of an authorisation to a local municipality to perform a certain function or exercise a certain power; to validate the Property Valuation Ordinance, 1993 (Cape), and provide for other technical arrangements connected thereto; to provide for uncontested ward elections; and to provide for the election of office bearers of a municipality to be determined by lot if two candidates receive the same number of votes; to amend the Local Government: Municipal Systems Act, 2000, so as to provide for a general power to levy and recover fees, charges and tariffs; to further regulate the charging of interest on arrears; to provide for legal representation of employees of a municipality; and to further regulate clearance certificates for the transfer of property; to amend the Local Government: Municipal Structures Amendment Act, 2000, so as to re-determine the transition period and to repeal outdated provisions; to repeal certain laws; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

AMENDMENT OF ORGANISED LOCAL GOVERNMENT ACT, 1997

1. Amends [section 1](#) of the Organised Local Government Act, [No. 52 of 1997](#), by deleting [subsection \(2\)](#).

CHAPTER 2

AMENDMENT OF REMUNERATION OF PUBLIC OFFICE BEARERS ACT, 1998

2. Amends [section 7 \(2\)](#) of the Remuneration of Public Office Bearers Act, [No. 20 of 1998](#), by substituting the word "Despite" with the expression "Subject to".

3. Validation of certain determinations and payments.—The salaries and allowances paid to any member of a municipal council during the 1998/1999 municipal financial year in accordance with—

- (a) Circular 25 of 1998 (as amended by Amendment Slip No. 3 of 1998) issued by the Gauteng Department of Development Planning and Local Government; and
- (b) Proclamation (Western Cape) No. 48/1998 of 4 December 1998, read with Circular C18/1998, issued by the Western Cape Department of Governmental Affairs and Housing,

must be regarded as having been validly determined and paid under the Remuneration of Public Office Bearers Act, 1998 ([Act No. 20 of 1998](#)).

CHAPTER 3

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, 1998

4. Amends [section 1](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes the definition of "[Department](#)"; [paragraph \(b\)](#) substitutes the definition of "[determination](#)"; [paragraph \(c\)](#) substitutes the definition of "[employee](#)"; [paragraph \(d\)](#) substitutes the definition of "[Minister](#)"; and [paragraph \(e\)](#) substitutes the definition of "[this Act](#)".

5. Substitutes [section 4](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#).

6. Amends [section 6](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#), by substituting [subsection \(1\)](#).

7. Amends [section 8 \(5\)](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#), by substituting the words preceding [paragraph \(a\)](#).

8. Amends [section 21](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#), as follows:—[paragraph \(a\)](#) adds the proviso to [subsection \(2\)](#); [paragraph \(b\)](#) substitutes [subsection \(5\)](#); and [paragraph \(c\)](#) adds [subsection \(6\)](#).

9. Substitutes [section 22](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#).

10. Amends [section 23](#) of the Local Government: Municipal Demarcation Act, [No. 27 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes [subsection \(1\)](#); and [paragraph \(b\)](#) adds [subsection \(3\) \(b\)](#), the existing subsection becoming [paragraph \(a\)](#).

CHAPTER 4

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998

11. Amends the preamble to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting in the fourteenth line of the Afrikaans text the

word "nedesettings" with the word "nedersettings".

12. Amends [section 21 \(2\)](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by adding the proviso.
13. Amends [section 35](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting [subsection \(1\)](#).
14. Amends [section 37](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes in [paragraph \(b\)](#) the expression "[section 32](#)" with the expression "[section 59](#) of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#))"; and [paragraph \(b\)](#) substitutes in [paragraph \(e\)](#) the expression "[Schedule 5](#)" with the expression "[Schedule 1](#) to the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#))".
15. Amends [section 49](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by adding [subsection \(3\)](#).
16. Amends [section 56](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes in [subsection \(3\) \(f\)](#) the expression "[section 32](#)" with the expression "[section 59](#) of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#))"; and [paragraph \(b\)](#) adds [subsection \(7\)](#).
17. Amends [section 64 \(2\)](#) of the Afrikaans text of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting the word "Metroplitaanse" with the word "Metropolitaanse".
18. Amends [section 81](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes in [subsection \(1\)](#) of the Afrikaans text the word "ge?dentifiseer" with the word "geidentifiseer"; and [paragraph \(b\)](#) adds [subsection \(5\) \(b\)](#), the existing subsection becoming [paragraph \(a\)](#).
19. Amends [section 84](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes in [subsection \(3\) \(b\) \(iii\)](#) of the Afrikaans text the word "verandering" with the word "verordeninge"; [paragraph \(b\)](#) substitutes [subsection \(3\) \(c\)](#); and [paragraph \(c\)](#) adds [subsection \(3\) \(d\)](#) and [\(e\)](#).
20. Substitutes [section 86](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), in the Afrikaans text.
21. Amends [section 93](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by adding [subsections \(7\)](#) up to and including [\(10\)](#).
22. Inserts [item 8A](#) in [Schedule 1](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#).
23. Amends [item 13](#) of [Schedule 1](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting the expression "chief electoral officer", wherever it appears, with the expression "Electoral Commission".
24. Amends [item 17](#) of [Schedule 1](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting the expression "chief electoral officer", wherever it appears, with the expression "Electoral Commission".
25. Amends [item 18 \(1\)](#) of [Schedule 1](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by adding [paragraph \(b\)](#), the existing subitem becoming [paragraph \(a\)](#).
26. Amends [item 20](#) of [Schedule 1](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting subitem (1).
27. Amends [item 1](#) of [Schedule 2](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes in the Afrikaans text the word "toespasing" in the definition of "[verkiesing](#)" with the word "toepassing"; and [paragraph \(b\)](#) inserts the definition of "[independent ward councillor](#)".
28. Amends [item 10 \(7\)](#) of [Schedule 2](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting in the Afrikaans text the word "wtter" with the word "watter".
29. Amends [item 11](#) of [Schedule 2](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by adding [subitem \(1\) \(b\)](#), the existing subitem becoming [paragraph \(a\)](#).
30. Amends [item 13](#) of [Schedule 2](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting subitem (1).
31. Amends [item 17](#) of [Schedule 2](#) to the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—[paragraph \(a\)](#) substitutes subitem (1);

paragraph (b) substitutes subitem (2); and paragraph (c) substitutes in subitem (5) the word "councillor" with the expression "independent ward councillor".

32. Amends item 20 of Schedule 2 to the Local Government: Municipal Structures Act, No. 117 of 1998, by adding subitem (2) (b), the existing subitem becoming paragraph (a).

33. Amends the Afrikaans text of item 23 of Schedule 2 to the Local Government: Municipal Structures Act, No. 117 of 1998, as follows:—paragraph (a) substitutes the word "uiteput" with the word "uitgeput"; and paragraph (b) substitutes the expression "item 18 van Bylae 1" with the expression "item 11".

34. Amends item 8 of Schedule 3 to the Local Government: Municipal Structures Act, No. 117 of 1998, by adding subitem (3).

CHAPTER 5

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000

35. Amends section 1 of the Local Government: Municipal Systems Act, No. 32 of 2000, as follows:—paragraph (a) inserts the definition of "municipal service"; paragraph (b) inserts the definition of "property"; and paragraph (c) inserts the definition of "registrar of deeds".

36. Amends section 59 of the Local Government: Municipal Systems Act, No. 32 of 2000, by adding subsection (4).

37. Amends section 62 of the Local Government: Municipal Systems Act, No. 32 of 2000, by adding subsection (6).

38. Amends section 67 (1) of the Local Government: Municipal Systems Act, No. 32 of 2000, by substituting the words preceding paragraph (a).

39. Inserts section 75A in the Local Government: Municipal Systems Act, No. 32 of 2000.

40. Amends section 76 (b) (iii) of the Local Government: Municipal Systems Act, No. 32 of 2000, by substituting item (aa).

41. Substitutes section 77 of the Local Government: Municipal Systems Act, No. 32 of 2000.

42. Amends section 94 of the Local Government: Municipal Systems Act, No. 32 of 2000, by substituting subsection (2).

43. Inserts section 109A in the Local Government: Municipal Systems Act, No. 32 of 2000.

44. Substitutes section 118 of the Local Government: Municipal Systems Act, No. 32 of 2000.

45. Inserts item 12A in Schedule 1 to the Local Government: Municipal Systems Act, No. 32 of 2000.

46. Amends item 14 of Schedule 1 to the Local Government: Municipal Systems Act, No. 32 of 2000, by substituting subitem (5).

CHAPTER 6

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT ACT, 2000

47. Amends section 13 of the Local Government: Municipal Structures Amendment Act, No. 33 of 2000, by substituting subsection (1).

CHAPTER 7

MISCELLANEOUS MATTERS

48. **Repeal of legislation.**—The legislation specified in the first column of the Schedule is hereby repealed to the extent indicated in the second column of the Schedule.

49. **Short title.**—This Act is called the Local Government Laws Amendment Act, 2002.

<i>Title, number and year of law</i>	<i>Extent of repeal</i>
Local Government Ordinance, 1939 (Ordinance No. 17 of 1939) (Former Transvaal)	Section 50
Local Government Ordinance, 1962 (Ordinance No. 8 of 1962) (Former Orange Free State)	Section 119
Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R.293 of 16 November 1962)	Regulation 11 of Chapter 9
Municipal Ordinance, 1974 (Ordinance No. 20 of 1974) (Former Cape of Good Hope)	Section 96
Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974) (Former Natal)	Section 175
Municipalities Act, 1979 (Act No. 25 of 1979) (Former Transkei)	Section 94
Black Communities Development Act, 1984 (Act No. 4 of 1984)	Section 54 (2) (a)
Municipal Act, 1987 (Act No. 17 of 1987) (Former Ciskei)	Section 91
Proclamation No. R.30 of 9 March 1988	Regulation 17
Regulations Regarding Local Councils, 1988 (Government Notice No. R. 2517 of 9 December 1988)	Regulation 43 (5)

LOCAL GOVERNMENT LAWS AMENDMENT ACT NO. 19 OF 2008

[ASSENTED TO 9 OCTOBER, 2008]
[DATE OF COMMENCEMENT: 13 OCTOBER, 2008]
(English text signed by the President)

This Act was published in *Government Gazette* 31509 dated 13 October, 2008.

ACT

To amend the—

Local Government: Municipal Demarcation Act, 1998, so as to insert a definition; and to provide for determinations of municipal boundaries to take effect on the commencement of the following municipal financial year;

Local Government: Municipal Structures Act, 1998, so as to insert a definition; to provide for consequential amendments pertaining to interventions in municipalities; to provide for amendments to provisions relating to ward committees; and to provide for authorisations and adjustments of powers and functions to take effect on the commencement of the following municipal financial year;

Local Government: Municipal Systems Act, 2000, so as to substitute a definition; to provide that the term of employment of a municipal manager may not exceed a maximum of five years; to align certain delegations with the Local Government: Municipal Finance Management Act, 2003; to regulate the participation of municipal staff members in national, provincial and local elections; to amend the Minister's regulatory powers; to provide for a municipality to provide an owner with copies of accounts sent to the occupier of such property; to provide for a correction in the Afrikaans text of section 106; to refine the process to investigate maladministration and related matters; to provide for the exemption of municipalities from provisions of the said Act, and to amend the Code of Conduct for Councillors and Municipal Staff in order to align it with the Municipal Finance Management Act; and

Local Government: Municipal Property Rates Act, 2004, so as to substitute certain definitions; to allow quantification in terms of cost of relief measures to be dealt with through the municipal budget; to allow for municipalities not to value public service infrastructure if there is no intention to levy rates; to correct certain citations; and to allow for the curbing of rates revenue;

to rationalise local government laws that have become obsolete as a result of local government legislation that was enacted since 1994; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1 AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, 1998

1. Amends [section 1](#) of the *Local Government: Municipal Demarcation Act, No. 27 of 1998*, by inserting the definition of "municipal financial year".
2. Amends [section 23](#) of the *Local Government: Municipal Demarcation Act, No. 27 of 1998*, by adding subsection (4).

CHAPTER 2 AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998

3. Amends [section 1](#) of the *Local Government: Municipal Structures Act, No. 117 of 1998*, by inserting the definition of "municipal financial year".
4. Amends [section 34](#) of the *Local Government: Municipal Structures Act, No. 117 of 1998*, as follows:—paragraph (a) substitutes subsection (3); and paragraph (b) substitutes subsection (4).

5. Amends [section 35](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting subsection (1).
6. Amends [section 73](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), as follows:—paragraph (a) substitutes subsection (1); and paragraph (b) adds subsection (5).
7. Amends [section 74](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by substituting paragraph (b).
8. Substitutes [section 75](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#).
9. Amends [section 84](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by adding subsection (4).
10. Amends [section 85](#) of the Local Government: Municipal Structures Act, [No. 117 of 1998](#), by inserting subsection (9A).

CHAPTER 3
AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS
ACT, 2000

11. Amends [section 1](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by substituting the definition of "political office bearer".
12. Amends [section 57](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by substituting subsection (6) (a).
13. Amends [section 60](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by substituting subsection (2).
14. Inserts [section 71A](#) in the Local Government: Municipal Systems Act, [No. 32 of 2000](#).
15. Amends [section 72](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by substituting subsection (1).
16. Amends [section 86H](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by inserting subsection (3).
17. Amends [section 102](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by adding subsection (3).
18. Amends [section 106](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), as follows:—paragraph (a) substitutes subsection (1) in the Afrikaans text; paragraph (b) substitutes subsection (3); and paragraph (c) adds subsection (4).
19. Amends [section 118](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by substituting in subsection (1A) the expression "120 days" for the expression "60 days".
20. Amends [Schedule 1](#), item 6 of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), as follows:—paragraph (a) deletes subitems (2) and (3); and paragraph (b) adds subitem (4).
21. Amends [Schedule 1](#), item 14 of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), by substituting subitem (4).
22. Amends [Schedule 2](#), item 4 of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), as follows:—paragraph (a) deletes subitem (2) (a) and (b); and paragraph (b) adds subitem (3).
23. Inserts [Item 5A](#) in [Schedule 2](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#).

CHAPTER 4
AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL PROPERTY
RATES ACT, 2004

24. Amends [section 1](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), as follows:—paragraph (a) substitutes the definition of "land tenure right"; and paragraph (b) substitutes paragraph (j) of the definition of "public service infrastructure".

25. Amends [section 3](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), as follows:—paragraph (a) substitutes subsection (3) (e); and paragraph (b) substitutes subsection (3) (g).
26. Amends [section 7 \(2\) \(a\)](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting subparagraph (ii);
27. Amends [section 9 \(1\)](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting paragraph (a).
28. Amends [section 15 \(4\)](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting the words preceding paragraph (a).
29. Amends [section 17 \(1\)](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting paragraph (e).
30. Amends [section 19 \(1\)](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting paragraphs (a) and (b).
31. Amends [section 20](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting subsection (1).
32. Amends [section 46](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), as follows:—paragraph (a) substitutes subsection (3) (a); paragraph (b) substitutes in subsection (3) (b) the words preceding subparagraph (i); and paragraph (c) deletes subsection (5).
33. Amends [section 78](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), as follows:—paragraph (a) deletes the word "or" at the end of subsection (1) (e), adds the word "or" at the end of subsection (1) (f) and adds subsection 1 (g); and paragraph (b) deletes the word "or" at the end of subsection (4) (c), adds the word "or" at the end of subsection (4) (d) and adds subsection (4) (e).
34. Amends [section 86 \(1\)](#) of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), by substituting paragraph (c).
35. Amends Schedule, Part 1 of the Local Government: Municipal Property Rates Act, [No. 6 of 2004](#), as follows:—paragraph (a) inserts row number 1A; and paragraph (b) deletes row number 26.

CHAPTER 5
MISCELLANEOUS MATTERS

36. **Repeal of laws.**—The laws specified in the first column of [the Schedule](#) are hereby repealed to the extent indicated in the second column of [the Schedule](#).

37. **Short title.**—This Act is called the Local Government Laws Amendment Act, 2008.

Schedule
([Section 37](#))

(Editorial note: The section referred to under this Schedule header reflects incorrectly, the correct section is [section 36](#).)

Title, No. and year of law	Extent of repeal
Jan Kempdorp Act, 1964 (Act No. 40 of 1964)	The whole
Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983)	Chapter 1, section 14 , section 15 in so far as it has not been assigned to a province, sections 17A and 17G
Jan Kempdorp Amendment Act, 1985 (Act No. 4 of 1985)	The whole
Promotion of Local Government Affairs Amendment Act, 1985 (Act No. 45 of 1985)	Sections 2 and 3
Promotion of Local Government Affairs Amendment Act, 1986 (Act No. 79 of 1986)	The whole
Constitutional Laws Amendment Act, 1988 (Act No. 43 of 1988)	Sections 7 , 8 and 9
Promotion of Local Government Affairs Amendment Act, 1988 (Act No. 82 of 1988)	Sections 2 and 3
Local Authority Affairs Amendment Act (House of Assembly), 1991 (Act No. 127 of 1991)	Sections 10 and 11
Local Government Affairs Amendment Act, 1993 (Act No. 56 of 1993)	Sections 2 , 3 , 4 and 5
Local Government Affairs Second Amendment Act, 1993 (Act No. 117 of 1993)	Sections 4 and 7

Local Government Transition Act, 1993 (Act No. 209 of 1993)	The whole in so far as it has not been assigned to a province
Proclamation No. R 153 of 1994	The whole in so far as it amends Chapter 1 of the Promotion of Local Government Affairs Act, 1983
Local Government Transition Act Amendment Act, 1995 (Act No. 61 of 1995)	The whole
Local Government Transition Act Second Amendment Act, 1996 (Act No. 97 of 1996)	The whole

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT ACT NO. 7 OF 2011

[ASSENTED TO 2 JULY, 2011]
[DATE OF COMMENCEMENT: 5 JULY, 2011]

(English text signed by the President)

This Act was published in *Government Gazette* 34433 dated 5 July, 2011.

EDITORIAL NOTE

Please note that this act has commenced with effect from 5 July, 2011.

*Kindly refer to *Government Gazette* 34433 dated 5 July, 2011 for the original wording of sections that have come into operation.

ACT

To amend the Local Government: Municipal Systems Act, 2000, so as to insert and amend certain definitions; to make further provision for the appointment of municipal managers and managers directly accountable to municipal managers; to provide for procedures and competency criteria for such appointments, and for the consequences of appointments made otherwise than in accordance with such procedures and criteria; to determine timeframes within which performance agreements of municipal managers and managers directly accountable to municipal managers must be concluded; to make further provision for the evaluation of the performance of municipal managers and managers directly accountable to municipal managers; to require employment contracts and performance agreements of municipal managers and managers directly accountable to municipal managers to be consistent with the Act and any regulations made by the Minister; to require all staff systems and procedures of a municipality to be consistent with uniform standards determined by the Minister by regulation; to bar municipal managers and managers directly accountable to municipal managers from holding political office in political parties; to regulate the employment of municipal employees who have been dismissed; to provide for the Minister to make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers; to provide for the approval of staff establishments of municipalities by the respective municipal councils; to prohibit the employment of a person in a municipality if the post to which he or she is appointed is not provided for in the staff establishment of that municipality; to enable the Minister to prescribe frameworks to regulate human resource management systems for local government and mandates for organised local government; to extend the Minister's powers to make regulations relating to municipal staff matters; to make a consequential amendment to the Local Government: Municipal Structures Act, 1998, by deleting the provision dealing with the appointment of municipal managers; and to provide for matters connected therewith

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows—

*1 to 5 inclusive. Amend [sections 1, 54A, 56 and 56A](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), respectively.

*6. (1) Amends [section 57](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#).

(2) The deletion of section 57 (7) of the principal Act does not affect the continuation or validity of a fixed-term employment contract of a manager directly accountable to the municipal manager which is in force when this Act takes effect.

*7 to 14 inclusive. Amend [sections 57A, 66, 67, 72, 106, 120 and Schedule 1](#) of the Local Government: Municipal Systems Act, [No. 32 of 2000](#), respectively.

*15. Repeals [section 82](#) of Local Government: Municipal Structures Act, [No. 117 of 1998](#).

16. Transitional arrangements.—This Act does not affect the employment contract of a municipal manager or a manager directly accountable to the municipal manager entered into before this Act took effect, and such contract continues until it lapses or is terminated.

17. Short title.—This Act is called the Local Government: Municipal Systems Amendment Act, 2011.

COMMENCEMENT OF THIS ACT

Date of commencement	The whole Act/ Sections	Proclamation No.	Government Gazette	Date of Government Gazette
5 July, 2011	The whole Act	GN 559	34433	5 July, 2011
This Act was published in <i>Government Gazette</i> 34433 dated 5 July, 2011.				
