

NOTICE 556 OF 2012**NATIONAL TREASURY****LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT****(ACT 56 OF 2003)****DRAFT MUNICIPAL FINANCIAL MISCONDUCT REGULATIONS****CALL FOR COMMENTS**

I, Pravin Gordhan, Minister of Finance, after consultation with the Minister of Cooperative Governance and Traditional Affairs, hereby publish the draft regulations made, in terms of section 168 and 175 read with chapter 15, for public comment in terms of section 169(1)(b) of the Municipal Finance Management Act 56 of 2003, as set out in the Schedule.

Interested persons may submit their comments on the draft regulations in writing on or before 31 August 2012 to: The Director-General, c/o Mr TV Pillay, National Treasury, Private Bag X115, Pretoria, 0001, or per fax to (012) 315-5230 or e-mail to MFMA@treasury.gov.za. Kindly provide the name, address, telephone, fax numbers and e-mail address of the person or organisation submitting the comments.

PRAVIN GORDHAN
MINISTER OF FINANCE

EXPLANATORY MEMORANDUM

Municipal Financial Misconduct Regulations

The implementation of the Municipal Finance Management Act (MFMA) in all municipalities and entities remains an important strategy to modernise and improve financial management and service delivery. Linked to this strategy are the fundamental principles of effective and efficient utilisation of public resources and transparent and accountable financial management practices.

Whilst many of the reforms that form part of this strategy have been implemented over the last seven years, and much has been done to provide various training and capacity building initiatives, it has become imperative to strengthen the enforcement provisions enabled in the MFMA.

To give effect to the priorities outlined in government outcomes and to address recent requests to provide further regulations in dealing effectively with matters of financial misconduct, the attached set of regulations were developed to complement the amendment to the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) ("MSA") as amended and regulations issued in terms thereof. These regulations give effect to the Medium Term Strategic Framework for 2009 – 2014 to introduce measures to combat corruption in the public and private sectors through advocacy, strengthening the legal and policy prescripts and frameworks and implementation thereof.

The Auditor-General has highlighted a number of issues in the Consolidated Report on Local Government Audits for 2009/10 that include, among others, non-adherence to financial management policies and prescripts, as well as the need to improve governance arrangements. A significant number of municipalities have incurred unauthorised, irregular as well as fruitless and wasteful expenditure.

The regulations on financial misconduct will support measures to expeditiously address contraventions of financial misconduct and mismanagement.

Section 175 of the MFMA grants the Minister of Finance the power to make regulations dealing with financial misconduct and related matters. The objective of the Financial Misconduct Regulations is to set out processes and procedures that municipalities and entities must follow when dealing with financial misconduct. The regulations will apply to all officials and political office bearers within municipalities and municipal entities.

The Financial Misconduct Regulations consist of four chapters to assist with its implementation. The first chapter contains the definition of terms that are used in the regulations. The second chapter deals with amongst other things, the manner in which allegations of financial misconduct should be reported within municipalities and municipal entities, procedures for confidential reporting as well as a clause catering for so-called "whistle blowers". Section 175 of the MFMA also allows for the establishment of a Disciplinary Board ("the Board"). The regulations therefore gives effect to this provision by the establishing the Board. It requires that the Board to be an independent advisory body that will assist the council or the board of directors with the investigation of allegations of financial misconduct. The Board will also make recommendations based on the findings of the investigation on further steps to be taken regarding the disciplinary proceedings or any other relevant steps.

Chapter Two also provides guidelines with regard to the composition of the Board including those persons that are disqualified from serving on the board. The chapter sets out the manner in which the council or the board of directors must refer allegations of financial misconduct to the Board and the timeframes within which the Board must initiate investigations. In the event that the Board recommends that the allegation be further investigated by an external investigator, the regulations provides for the framework within which the external investigator must be appointed. It provides for the creation and submission of reports to the council or the board of directors by the investigation teams. The regulations also make provision for the Minister and MEC's for Finance to receive investigation reports and an information document that will clearly set out the name and position of the alleged wrongdoer, summary of facts of allegation including the monetary value involved, any disciplinary steps taken or to be taken against the alleged wrongdoer or if no disciplinary steps have been taken, the reasons for such decisions. The MEC for Finance, the national or provincial treasury may also intervene by directing that an allegation be investigated if the council or board of directors has done nothing.

The third chapter sets out the processes and procedures to be followed when allegations of financial misconduct are lodged against political office-bearers in municipalities or municipal entities. This provides for allegations against political office-bearers in municipalities to be reported to the Speaker of the council who must deal with the allegations in accordance with the procedure set out in item 13 of Schedule 1 of the MSA, if the alleged misconduct

amounts to a breach of the Code of Conduct for Councillors. If the misconduct does not amount to a breach of the Code of Conduct for Councillors, the Speaker must deal with the allegations in terms of regulations 16 and 18. The Speaker will also be obliged to report the allegation together with all information in this regard to the Minister of Finance.

In the event that an allegation is lodged against a director of a municipal entity, the regulations require that it be reported to the chairperson of the board of directors. If the allegation is lodged against the chairperson of the board of directors, the regulations require that such allegation be reported to the Mayor and accounting officer of the entity's parent municipality. The chairperson, Mayor or accounting officer must deal with the allegation in terms of section 93L of the MSA if the alleged misconduct amounts to a breach of the Code of Conduct applicable to directors of a municipal entity. In the event that the alleged misconduct does not amount to a breach of the Code of Conduct, the chairperson, Mayor or accounting officer must deal with the allegation in terms of regulation 17 and 19 and also report the allegation to the Minister of Finance.

The last chapter of the regulations contains the necessary transitional provisions. It basically provides that any disciplinary proceedings instituted prior to the Financial Misconduct Regulations coming into effect should be dealt with in terms of the Codes and Procedures or policies that prevailed at that time. The parties can also agree in writing that the provisions of the Financial Misconduct Regulations should apply. To improve transparency, provision has also been made that municipalities and municipal entities must report the outcomes of any disciplinary proceedings in their annual reports.

The Minister of Cooperative Governance and Traditional Affairs has recently promulgated the Disciplinary Regulations for Senior Managers in terms of the MSA. These Regulations are however, limited in its application as it applies to accounting officers and section 56 managers in municipalities only. The processes to be followed are now combined as the Municipal Financial Misconduct Regulations deal with processes and procedures regarding internal investigations and conclusion thereof in terms of financial misconduct.

The disciplinary proceedings will be dealt with in terms of the Disciplinary Regulations for Senior Managers or the collective bargaining agreement between the South African Local Government Association (SALGA) and relevant municipal unions. All issues that are not

covered in the Disciplinary Regulations for Senior Managers relating to financial misconduct will be dealt with in terms of the Financial Misconduct Regulations.

These regulations therefore provide a framework that is consistent with the provisions of the MSA and MFMA. The effective implementation of these regulations is intended to address current gaps identified.

Comments received during the consultation process will be considered and processed with a view to addressing any shortcomings.

**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003
FINANCIAL MISCONDUCT REGULATIONS**

The Minister of Finance has, in terms of sections 168 and 175, read with chapter 15, of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), and acting with the concurrence of the Minister for Cooperative Governance and Traditional Affairs, made the regulations as set out in the Schedule.

SCHEDULE

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CHAPTER 1 INTERPRETATION

Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context indicates otherwise, and—
 - (a) "Act" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
 - (b) "days" means calendar days;
 - (c) "financial misconduct" means any misappropriation, mismanagement, waste or theft of the finances of a municipality or municipal entity, and also includes any form of financial misconduct specifically set out in sections 171 and 172 of the Act;
 - (d) "parent municipality" has the meaning assigned to it in section 1 of the Municipal Systems Act;
 - (e) "senior manager" has the meaning assigned to it in section 1 of the Act.

CHAPTER 2 FINANCIAL MISCONDUCT IN MUNICIPALITIES AND MUNICIPAL ENTITIES IN GENERAL

Reporting of allegations of financial misconduct

2. (1) Any allegation of financial misconduct against—
 - (a) a political office-bearer of a municipality, must be reported to the Speaker of the council and the Minister of Finance;
 - (b) the accounting officer, a senior manager or the chief financial officer of a municipality, must be reported to the mayor of the municipality;
 - (c) officials of a municipality other than the accounting officer and those officials mentioned in (b) above, must be reported to the accounting officer;
 - (d) the accounting officer of a municipal entity, must be reported to the chairperson of the board of directors of the entity and to the mayor and accounting officer of the entity's parent municipality;
 - (e) a senior manager or any other official of a municipal entity, must be reported to the accounting officer of the entity; and
 - (f) a director of a municipal entity, must be reported to the chairperson of the board of directors or if the chairperson is implicated, to the mayor and the accounting officer of the entity's parent municipality.
- (2) The provincial and national treasury must also be informed of any allegation of financial misconduct involving a political office-bearer, accounting officer or senior manager of a municipality, or the accounting officer or director of a municipal entity
- (3) The person to whom an allegation of financial misconduct has been reported in terms of sub regulation (1) must ensure that each allegation is treated in a confidential manner.

- (4) This regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor, member of the board of directors of a municipal entity, political office-bearer or official of a municipality or municipal entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the Act.

Procedures for confidential reporting of financial misconduct

3. (1) Each municipality must—
- (a) establish reporting procedures to allow persons to report allegations of financial misconduct on a confidential basis; and
 - (b) in accordance with section 21A and 21B of the Municipal Systems Act, make public the reporting procedures established in terms of sub-regulation (1)(a).
- (2) In the case of a municipal entity—
- (a) the parent municipality of a municipal entity, together with the municipal entity, must establish reporting procedures to allow persons to report allegations of financial misconduct on a confidential basis; and
 - (b) make public the reporting procedures established in terms of sub-regulation (2)(a).
- (3) When establishing reporting procedures in terms of subregulations (1) and (2), the financial and administrative capacity of the relevant municipality or municipal entity, as the case may be, must be taken into account.

Protection of officials reporting allegations of financial misconduct

4. No official of a municipality or municipal entity who in good faith reports any allegation of financial misconduct against any councillor, political office-bearer, board member or official of a municipality or a municipal entity, as the case may be, or discloses any information regarding any alleged financial misconduct in the municipality or municipal entity, may be dismissed, harassed or prejudiced in any way because of such report or disclosure.

Establishment of Disciplinary Board and its functioning

5. (1) The Municipal Council of a municipality or board of directors of a municipal entity may establish a Disciplinary Board to investigate allegations of financial misconduct in municipalities and municipal entities, and to monitor the institution of disciplinary proceedings against the alleged wrongdoer.
- (2) The Disciplinary Board shall be an independent advisory body, that will assist the council or the board of directors with the investigation of allegations of financial misconduct, and provide appropriate recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.
- (3) The Board shall consist of five members appointed on a part-time basis by the Municipal Council or Board of Directors in accordance with the prescribed procedure, which shall provide for public participation in the nomination of candidates for appointment.

- (4) In order to be eligible for appointment as a member of the Board, a person shall:
- (a) be a natural person;
 - (b) be a citizen of the Republic and ordinarily resident in the Province; and
 - (c) not be disqualified under subregulation 5.
- (5) The following persons shall be disqualified from being appointed, continuing or acting as members of the Board:
- (a) anyone who has at any time been convicted of an offence in terms of this regulation or any other piece of legislation;
 - (b) anyone who at any time, whether in the republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged document or any offence of which dishonesty is an element;
 - (c) anyone who has at any time been removed from any office of trust on account of misconduct or dishonesty; and
 - (d) any political office bearer including councillors of a municipality or members of the board of directors of a municipal entity.
- (6) A Disciplinary Board referred to in subregulation (1) above shall be composed as follows:
- (a) the head of the internal audit unit within the municipality or municipal entity;
 - (b) members from the Audit Committee of the municipality or municipal entity;
 - (c) a senior official from the legal division in the municipality or municipal entity;
 - (d) an invitation may be extended to the National or Provincial treasury to provide a representative; and
 - (e) any other person as may be determined by the Council of a municipality or board of directors of a municipal entity.
- (7) No Councillor, accounting officer or member of senior management of a municipality or municipal entity may serve as members of the Disciplinary Board.

Preliminary investigation of allegations of financial misconduct

6. (1) When receiving a report of alleged financial misconduct in terms of regulation 2(1), the council or board of directors, as the case may be, must refer the matter to the Disciplinary Board in terms of section 171(4)(a) and 172(3)(a) of the Act.
- (2) The Disciplinary Board must initiate an investigation into the allegation, within 10 days of receiving a referral in terms of subregulation (1).
- (3) The Disciplinary Board of the municipality or municipal entity must conduct a preliminary investigation to determine whether the allegation is founded or not, and make a recommendation to the council or board of directors that referred the matter for investigation, whether the allegation is founded, and whether there are sufficient grounds to warrant conducting a full investigation into the allegation.
- (4) If the recommendation made by the Disciplinary Board in terms of subregulation (3) above is that the allegation is founded, an investigation referred to in subregulation (2) must be conducted by either—

- (a) the Disciplinary Board established by the council of a municipality or the board of directors of a municipality entity;
 - (b) the provincial and national treasury, but only if the conditions specified in regulation 13 apply; or
 - (c) if the cost, the seniority of the alleged wrongdoer involved and the seriousness or sensitivity of investigating the alleged financial misconduct warrants such a step, by—
 - (i) a person outside the municipality or the municipal entity with appropriate specialist expertise appointed for the investigation by the council or the board of directors, as the case may be; or
 - (ii) an investigative team appointed for the investigation by the council or the board of directors of the municipal entity, as the case may be.
- (5) An investigative team appointed for an investigation in terms of sub-regulation (4)(c)(ii) may include—
- (a) a person outside the municipality or municipal entity with appropriate specialist expertise, designated by the municipal council or the board of directors, as the case may be;
 - (b) a representative of the department responsible for local government in the relevant province, designated by the department; or
 - (c) representatives from either the relevant provincial treasury or the national treasury.

Investigation of allegation of financial misconduct and submission of reports

7. (1) Once an allegation of financial misconduct has been referred to a Disciplinary Board or an external investigator or investigative team in terms of regulation 6(5) for investigation, the investigating person or entity must develop a terms of reference for the investigation, which must be approved by the council or the board of directors, as the case may be.
- (2) The audit committee members, internal audit unit or legal services division of the municipality or municipal entity concerned must be requested to comment on the terms of reference of the financial misconduct investigation prior to its submission for approval by the council or the board of directors.
- (3) In the event that nothing has been done by either the council or the board of directors with regards to an allegation of financial misconduct that the Disciplinary Board has recommended is founded, and there are sufficient grounds to warrant conducting a full investigation into the allegation, the Disciplinary Board may approach the provincial and national treasury for assistance and a possible intervention in terms of regulation 13 or request the Municipal Public Accounts Committee to investigate the allegations.
- (4) When an allegation of financial misconduct is being investigated by the Disciplinary Board, the audit committee of a municipality or municipal entity may also be involved in the investigation, upon request from the council or the board of directors, as the case may be.

- (5) After the investigation is completed, the Disciplinary Board, independent investigator or investigating team, as the case may be, must—
- (a) compile a report on the investigation;
 - (b) submit its report to the Mayor and accounting officer or chairperson of the board of directors of the municipal entity, together with a recommendation, if appropriate, regarding disciplinary steps that should be taken against the alleged wrongdoer concerned; and
 - (c) immediately inform the Speaker of Council or board of directors in the case of a municipal entity, of the submission of the report referred to in paragraph (b), and also submit a copy of the report to the provincial and national treasury.
- (6) The Mayor, accounting officer or the chairperson of the board of directors in the case of a municipal entity, must table the report of the investigation referred to in subregulation (5) in council or the board of directors, as the case may be, for consideration within 7 days of receiving the report.
- (7) In the event that the report that is tabled in council or the board of directors is amended, the officials mentioned in paragraph (a) above will have to provide written reasons for the amendments to council or the board of directors.
- (8) If the findings or recommendations of the report mentioned in paragraph (a) above are rejected by council or the board of directors, reasons for the rejection of the findings or recommendations must be provided to the Disciplinary Board or the independent investigator or investigative team, as the case may be, within 5 days of such rejection by council or the board of directors.
- (9) In the event that recommendations in terms of subregulation (5)(b) above regarding disciplinary steps that should be taken against the alleged wrongdoer are not implemented, the Disciplinary Board or the independent investigator or investigative team, as the case may be, must notify the provincial and national treasury for a possible intervention in terms of regulation 13.
- (10) In the event that the Disciplinary Board or the independent investigator or investigative team, as the case may be, finds that the allegations are founded and recommends that disciplinary proceedings be instituted against the alleged wrongdoer, the disciplinary proceedings must be instituted in accordance with the applicable systems and procedures contained in the Local Government: Municipal Systems Act (Act No 32 of 2000 as amended): Local Government: Disciplinary Codes and Procedures for Senior Managers Regulations. In the event that the recommendation is made against an official below the section 56 managers, the disciplinary proceedings as set out in the collective bargaining agreement entered into between SALGA and the respective municipal unions will have to be implemented.
- (11) In the event that the alleged wrongdoer is found guilty after the disciplinary proceedings, he or she may not be re-employed in any municipality for a period of ten years as per section 57A of the Local Government: Municipal Systems Amendment Act, 2011.

Purpose of investigations

8. (1) An investigation in terms of regulation 6 and 7 must be aimed at establishing—
- (a) whether the allegation against the alleged wrongdoer concerned has any substance; and
 - (b) if so, whether there are sufficient grounds for instituting disciplinary proceedings against the alleged wrongdoer.
- (2) If it is determined by the Disciplinary Board during the preliminary investigation referred to in regulation 6(3) that the allegation is frivolous, vexatious, speculative or obviously unfounded, the investigation must be immediately terminated.

Reporting of alleged financial misconduct to South African Police Service

9. (1) If the alleged financial misconduct constitutes a criminal offence in terms of section 173 of the Act, the accounting officer, or the council or board of directors of a municipal entity if the accounting officer is involved, must report the alleged financial misconduct to the South African Police Service.
- (2) The accounting officer, municipal council or board of directors of a municipal entity may not delay reporting the matter to the South African Police Service pending completion of the investigation referred to in regulation 6 and 7, if there is any likelihood of further financial loss for the municipality or the municipal entity because of the alleged financial misconduct.
- (3) The accounting officer, municipal council or board of directors of a municipal entity must immediately report to the South African Police Services the matters provided for in section 32(6) and (7) of the Act.
- (4) In the event that there has been a successful prosecution on financial misconduct against an alleged wrongdoer, such judgment must be reported to the national treasury, together with full details of the convicted wrongdoer, the name of the municipality where the offence was committed, and the sanction that was imposed.

Preparation of information document on alleged financial misconduct

10. (1) The municipality or municipal entity must prepare an information document on the alleged financial misconduct stating—
- (a) the name and position of the alleged wrongdoer against whom the allegation was made;
 - (b) a summary of the facts and circumstances of the alleged financial misconduct, including the monetary value involved;
 - (c) any disciplinary steps taken or to be taken against the alleged wrongdoer concerned, or if no disciplinary steps have been or are to be taken, the reasons for the decision;
 - (d) the case number issued by the South African Police Service, if the alleged financial misconduct constitutes an offence in terms of section 173 of the Act; and
 - (e) any steps taken or to be taken to recover any unauthorised, irregular or fruitless and wasteful expenditure incurred as a result of the alleged financial misconduct in terms of section 32 of the Act.

- (2) The municipality or municipal entity must promptly submit the information document compiled in terms of subregulation (1), together with any investigation reports compiled in terms of regulation 6 and 7 to—
- (a) the mayor of the municipality;
 - (b) the mayor and the accounting officer of the parent municipality, in the case of a municipal entity;
 - (c) the chairperson of the board of directors of a municipal entity, in the case of a municipal entity;
 - (d) the MEC for finance in the province;
 - (e) the MEC for local government in the province;
 - (f) the Auditor-General; and
 - (g) the provincial and national treasury.

Tabling of information documents in municipal council or board of directors of municipal entities

11. (1) The mayor of a municipality or the chairperson of the board of directors of a municipal entity must table the information document submitted in terms of regulation 10(2) in the municipal council or the board of directors at the first meeting of the council or the board of directors after receipt of the document by the mayor or the chairperson of the board.
- (2) Any resolutions taken by the municipal council or the board of directors relating to the information document referred to in subregulation (1) must be reported to the provincial and national treasury.
- (3) If the mayor or the accounting officer or the chairperson of the board of directors as the case may be is of the view that the alleged financial misconduct may have a significant impact on the finances of the municipality, and that the funds need to be recovered from the alleged wrongdoer concerned, the mayor may request the Speaker of the municipal council to convene a special meeting of the council to discuss the recoverability of the funds as per section 32 of the Act.

Reports on disciplinary proceedings

12. (1) The municipality or municipal entity must report to the parties mentioned in regulation 10(2)—
- (a) any decision to institute or not to institute disciplinary proceedings against the wrongdoer who allegedly committed financial misconduct;
 - (b) the reasons for the decision;
 - (c) the outcome where disciplinary proceedings have been instituted; and
 - (d) whether a charge has been laid against the alleged wrongdoer concerned with the South African Police Service, if the alleged financial misconduct constitutes a criminal offence in terms of section 173 of the Act.
- (2) Municipalities and municipal entities must report on all suspensions and disciplinary action taken in cases of financial misconduct in their annual reports.

Interventions by the National and Provincial Treasury

13. In the event that a municipality or municipal entity fails to investigate an allegation of financial misconduct, the provincial or national treasury or the MEC for Finance in the province may direct that the allegation be investigated against the relevant person concerned.

CHAPTER 3**FINANCIAL MISCONDUCT BY POLITICAL OFFICE-BEARERS AND MEMBERS OF THE BOARD OF DIRECTORS OF MUNICIPAL ENTITIES****Allegations of financial misconduct against political office-bearers**

14. If an allegation of financial misconduct against a political office-bearer of a municipality is reported to the Speaker of the municipal council, the Speaker must deal with the allegation in accordance with the procedure set out in—
- (a) item 13 of Schedule 1 of the Municipal Systems Act, if the alleged misconduct amounts to a breach of Code of Conduct for Councillors;
 - (b) regulations 16 and 18 of these Regulations, if the alleged financial misconduct does not amount to a breach of Code of Conduct for Councillors; and
 - (c) report the allegation to the Minister of Finance.

Allegations of financial misconduct against directors of municipal entities

15. In the case of a municipal entity, if an allegation of financial misconduct against a director of a municipal entity is reported to the chairperson of the board, or if the chairperson is implicated, to the mayor and the accounting officer of the entity's parent municipality, the chairperson, mayor or accounting officer must—
- (a) deal with the allegation in terms of section 93L of the Municipal Systems Act, if the alleged misconduct amounts to a breach of Code of Conduct applicable to directors of a municipal entity in terms of that section;
 - (b) deal with the allegation in accordance with the procedure set out in regulations 17 and 19 of these Regulations, if the alleged financial misconduct does not amount to a breach of Code of Conduct; and
 - (c) report the allegation to the Minister of Finance.

Allegations of financial misconduct not amounting to breaches of Code of Conduct for Councillors

16. (1) When receiving a report of alleged financial misconduct against a political office-bearer which must be dealt with in terms of this regulation and regulation 18, the Speaker of the municipal council must promptly—
- (a) authorise an investigation of the facts and circumstances of the alleged financial misconduct;
 - (b) give the political office-bearer a reasonable opportunity to reply in writing regarding the alleged financial misconduct; and
 - (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

- (2) A report referred to in subregulation (1)(c) is open to the public.
- (3) The Speaker must report the outcome of the investigation to—
 - (a) the MEC for finance in the province;
 - (b) the MEC for local government in the province; and
 - (c) the Minister of Finance.

Allegations of financial misconduct not amounting to breaches of Code of Conduct for directors of municipal entities

17. (1) After receiving a report of alleged financial misconduct against a director, the chairperson of the board of directors, or if the chairperson is implicated, the mayor and the accounting officer of the entity's parent municipality must promptly—
- (a) authorise an investigation of the facts and circumstances of the alleged financial misconduct;
 - (b) give the director or the chairperson, as the case may be, a reasonable opportunity to reply in writing regarding the alleged financial misconduct; and
 - (c) report the matter to a meeting of the board of directors after paragraphs (a) and (b) have been complied with.
- (2) A report referred to in subregulation (1)(c) is open to the public.
- (3) The chairperson of the board of directors, or if the chairperson is implicated, the mayor and the accounting officer of the entity's parent municipality must report the outcome of the investigation to—
- (a) the council of the entity's parent municipality;
 - (b) the MEC for finance in the province;
 - (c) the MEC for local government in the province; and
 - (d) the Minister of Finance.

Powers of municipal councils to investigate allegations of financial misconduct not amounting to breaches of Code of Conduct for Councillors

18. (1) When receiving a report in terms of regulation 16, the municipal council may—
- (a) investigate and make a finding on any alleged financial misconduct by a political office-bearer; or
 - (b) utilise a council committee—
 - (i) to investigate and make a finding on any alleged financial misconduct by a political office-bearer; and
 - (ii) to make appropriate recommendations to the council.
- (2) If the council or the council committee finds that a political office-bearer has committed financial misconduct, the council may—
- (a) issue a formal warning to the political office-bearer;
 - (b) reprimand the political office-bearer;
 - (c) request the MEC for finance and MEC for local government in the province to suspend the political office-bearer for a period;

- (d) fine the political office-bearer;
 - (e) request the MEC for finance and MEC for local government in the province to remove the political office-bearer from office; and
 - (f) report the finding to the Ministers of Finance and Cooperative Governance and Traditional Affairs.
- (3) Any political office-bearer who has been warned, reprimanded or fined in terms of subregulation (2)(a), (b) or (d), may;
- (a) within 14 days of having been notified of the decision of the council, appeal in writing to the MEC for finance and MEC for local government, 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 Finance and MEC responsible for local government in writing;
 - (d) the MEC for Finance and MEC responsible for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council, and inform the political office-bearer and the council of the outcome of the appeal.
- (4) The MEC for Finance and MEC responsible for local government may, in order to assist in the consideration of an appeal referred to in subregulation (3), appoint a person or committee to investigate any alleged financial misconduct and to make a recommendation on whether the political office-bearer should be suspended or removed from office.
- (5) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subregulation (4).
- (6) If the MEC for finance and MEC for local government are of the opinion that the political office-bearer has committed financial misconduct and that the misconduct warrants a suspension or removal from office, the MECs may—
- (a) suspend the political office-bearer for a period and on conditions determined by the MECs; or
 - (b) remove the political office-bearer from office.
- (1) Any investigation in terms of this regulation must be conducted in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), in so far as that Act is applicable in the circumstances.

Powers of board of directors to investigate allegations of financial misconduct not amounting to breaches of Code of Conduct for directors of municipal entities

19. (1) When receiving a report in terms of regulation 17, the board of directors of a municipal entity may—
- (a) investigate and make a finding on any alleged financial misconduct by a director; or
 - (b) establish a special committee—
 - (i) to investigate and make a finding on any alleged financial misconduct by a director; and
 - (ii) to make appropriate recommendations to the board.

- (2) If the board of directors or a special committee finds that a director has committed financial misconduct, the board may—
- (a) issue a formal warning to the director;
 - (b) reprimand the director; or
 - (c) recommend to the parent municipality that the director be removed or recalled in terms of section 93G of the Municipal Systems Act.

Parent municipalities to be informed of investigations, findings and actions taken

20. The chairperson of the board of directors, or if the chairperson is implicated, the mayor and the accounting officer of the entity's parent municipality of a municipal entity, must inform its parent municipality of—
- (a) any investigation of financial misconduct against a director, whether conducted in terms of Code of Conduct referred to in regulation 15(a) or the procedures referred to in regulation 15(b); and
 - (b) any action taken against a director in terms of Code of Conduct or regulation 19.

CHAPTER 4

GENERAL

Transitional arrangements

21. (1) Any disciplinary process instituted prior to the commencement of these Regulations and not yet completed—
- (a) must be finalised in terms of the Code and Procedures or any policies that prevailed at the time when the process was instituted; or
 - (b) may, by mutual agreement in writing between the official, political office-bearer or director of the municipal entity and the municipal council or board of directors, be finalised in terms of these Regulations.

Short title and commencement

22. These Regulations are called the Financial Misconduct Regulations and shall come into operation on a date determined by the Minister by Notice in the Gazette.