

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000

[ASSENTED TO 14 NOVEMBER 2000]

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(Unless otherwise indicated)

(English text signed by the Acting President)

as amended by

Institution of Legal Proceedings against certain Organs of State Act 40 of 2002

Local Government Laws Amendment Act 51 of 2002

Local Government: Municipal Systems Amendment Act 44 of 2003

Local Government: Municipal Property Rates Act 6 of 2004

Regulations under this Act

CERTIFICATE IN TERMS OF SECTION 118

LOCAL GOVERNMENT MUNICIPAL PERFORMANCE REGULATIONS FOR MUNICIPAL MANAGERS
AND MANAGERS DIRECTLY ACCOUNTABLE FOR MUNICIPAL MANAGERS, 2006

LOCAL GOVERNMENT: MUNICIPAL PLANNING AND PERFORMANCE MANAGEMENT REGULATIONS

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS REGULATIONS

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;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows-

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CHAPTER 1
INTERPRETATION (s 1)

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 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 subdelegation 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 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;

[Definition of 'external service provider' inserted by s. 1 (c) of Act 44 of 2003.]

'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 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 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 44 of 2003.]

'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 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 27 of 1998);

'municipal manager' means a person appointed in terms of section 82 of the Municipal Structures Act;

'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 51 of 2002.]

'Municipal Structures Act' means the Local Government: Municipal Structures Act, 1998 (Act 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 1 of 1999);

[Definition of 'National Treasury' inserted by s. 1 (g) of Act 44 of 2003.]

'organised local government' means an organisation recognised in terms of section 2 (1) of the Organised Local Government Act, 1997 (Act 52 of 1997), to represent local government nationally or provincially;

'organ of state' means an organ of state as defined in section 239 of the Constitution;

'ownership control'

[Definition of 'ownership control' deleted by s. 1 (i) of Act 44 of 2003.]

'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 (*h*) of Act 44 of 2003.]

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

'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 61 of 1973);

[Definition of 'private company' inserted by s. 1 (*j*) of Act 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 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 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 47 of 1937);

[Definition of 'registrar of deeds' inserted by s. 35 (*c*) of Act 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 44 of 2003.]

'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 (ss 2-7)

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.

(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to-

- (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 (ss 8-15)

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 44 of 2003.]

10 Assignment of functions or powers to specific municipalities by acts of executive or by agreement

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 44 of 2003.]

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 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 (ss 16-22)

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 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 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 (ss 23-37)**

[Date of commencement of Chapter 5 (ss. 23 to 37 inclusive): 1 July 2001.]

Part 1 *General (ss 23-25)*

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 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 (s 26)

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 (ss 27-34)

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 timeframes 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 (ss 35-37)

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 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 of s. 36: 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 (ss 38-49)

[Date of commencement of Chapter 6 (ss. 38 to 49 inclusive): 1 July 2001.]

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 of s. 40: 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 of s. 42: 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 of s. 44: 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 44 of 2003.]

[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 (ss 50-72)

Part 1

Basic principles (ss 50-52)

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 (ss 53-58)

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.

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 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 44 of 2003.]

56 Appointment of managers directly accountable to municipal managers

(a) A municipal council, after consultation with the municipal manager, appoints a manager directly accountable to the municipal manager.

(b) A person appointed as a manager in terms of paragraph (a), must have the relevant skills and expertise to perform the duties associated with the post in question, taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination.

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) be concluded within a reasonable time after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, and thereafter, within one month after the beginning of the financial year of the municipality;
- (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 include, subject to applicable labour legislation, details of duties, remuneration, benefits and other terms and conditions of employment.

(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) standards and procedures for evaluating performance and intervals for evaluation; and
- (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 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 44 of 2003.]

(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 not exceeding a period ending two years after the election of the next council of the municipality;
- (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) A municipality may extend the application of subsection (6) to any manager directly accountable to the municipal manager.

58

[S. 58 repealed by s. 9 of Act 44 of 2003.]

Part 3

Delegation system (ss 59-65)

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 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 an executive committee or executive mayor or chief financial officer decisions to make investments on behalf of the municipality within a policy framework determined by the Minister of Finance.

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 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 subdelegation

The withdrawal, amendment or lapsing of a delegation or subdelegation 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 (ss 66-71)**

66 Staff establishments

(1) A municipal manager, within a policy framework determined by the municipal council and subject to any applicable legislation, must-

- (a) approve a staff establishment for the municipality;
- (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.

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 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 51 of 2002.]

(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 to a person referred to in section 57 except to the extent that they are inconsistent with that person's employment contract.

(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 81 of 1998), and the Skills Development Levies Act, 1999 (Act 9 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

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.

Part 5 Miscellaneous (s 72)

72 Regulations and guidelines

(1) The Minister may, subject to applicable labour legislation and after consultation with the bargaining council established for municipalities, for the purposes of this Chapter-

- (a) make regulations to regulate the following matters:
 - (i) the procedure to be followed in appealing against decisions taken in

- terms of delegated powers and the disposal of such appeals;
- (ii) the suspension of decisions on appeal;
- (iii) the setting of uniform standards for-
 - (aa) municipal staff establishments,
 - (bb) municipal staff systems and procedures and the matters that must be dealt with in such systems and procedures; and
 - (cc) any other matter concerning municipal personnel administration;
- (iv) capacity building within municipal administrations;
- (v) training of staff members of municipalities, including in-house training, subject to the requirements of the Skills Development Act, 1998 (Act 81 of 1998), and the Skills Development Levies Act, 1999 (Act 9 of 1999); and
- (vi) any other matter that may facilitate the application of this Chapter; or
- (b) issue guidelines to provide for the following matters:
 - (i) the establishment of job evaluation systems;
 - (ii) the regulation of remuneration and other conditions of service of staff members of municipalities, subject to applicable labour legislation;
 - (iii) the measuring and evaluation of staff performance;
 - (iv) the development of remuneration grading and incentive frameworks for staff members of municipalities;
 - (v) corrective steps in the case of substandard performance by staff members of municipalities;
 - (vi) any other matter that may facilitate the implementation by a municipality of an efficient and effective system of personnel administration.

(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.

CHAPTER 8

MUNICIPAL SERVICES (ss 73-86A)

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 (ss 74-75A)

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 44 of 2003.]

- (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 51 of 2002.]

Part 2

Provision of services (ss 76-82)

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 108 of 1997);[Item (aa) substituted by s. 40 of Act 51 of 2002.]
 - (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 re-organised 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 51 of 2002.]

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 44 of 2003.]

(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 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
- (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 44 of 2003.]

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 44 of 2003.]

- (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 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 44 of 2003.]

Part 3

Service delivery agreements involving competitive bidding (ss 83-84)

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 44 of 2003.]
- (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 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 (ss 85-86)

[Heading substituted by s. 16 of Act 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 (s 86A)

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) criteria to be taken into account by municipalities when imposing surcharges on tariffs for services and determining the duration thereof;
- (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 44 of 2003.]

CHAPTER 8A **MUNICIPAL ENTITIES (ss 86B-94)**

[Chapter 8A inserted by s. 18 of Act 44 of 2003.]

Part 1
General provisions (s 86B)

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 44 of 2003.]

Part 2
Private companies (ss 86C-86G)

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 61 of 1973); or
- (b) acquire or hold an interest in a private company in accordance with the Companies Act, 1973 (Act 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 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 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 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 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 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 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 44 of 2003.]

Part 3

Service utilities (ss 86H-86K)

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.

(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 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 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 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 44 of 2003.]

Part 4

Multi-jurisdictional service utilities (ss 87-93)

[Heading inserted by s. 18 of Act 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 44 of 2003.]

88 Minister requesting the 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 44 of 2003.]

(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 44 of 2003.]

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;
- (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
- (i) 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 44 of 2003.]

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 44 of 2003.]

91

[S. 91 repealed by s. 23 of Act 44 of 2003.]

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 44 of 2003.]

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 44 of 2003.]

Part 5

Duties and responsibilities of parent municipalities (ss 93A-93D)

[Part 5 inserted by s. 26 of Act 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 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 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 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 44 of 2003.]

Part 6

Governance of municipal entities (ss 93E-93J)

[Part 6 inserted by s. 26 of Act 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 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 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 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 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 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 44 of 2003.]

Part 7 General (ss 93K-93L)

[Part 7 inserted by s. 26 of Act 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 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 44 of 2003.]

94

[S. 94 amended by s. 42 of Act 51 of 2002 and repealed by s. 27 of Act 44 of 2003.]

CHAPTER 9

CREDIT CONTROL AND DEBT COLLECTION (ss 95-104)

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 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.

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) such 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 (ss 105-108)

Part 1
Provincial monitoring (ss 105-106)

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 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) 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 submit a written statement

to the National Council of Provinces motivating the action.

Part 2

National monitoring and standard setting (ss 107-108)

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 (ss 109-118)

109 Legal proceedings

(1)

[Sub-s. (1) deleted by s. 2 (1) of Act 40 of 2002.]

(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 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 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 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 6 of 2004.]

(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 120 days from the date it has been issued.

(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 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 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 51 of 2002.]

CHAPTER 12 **MISCELLANEOUS (ss 119-124)**

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, 72, 86A and 104;

[Para. (a) substituted by s. 28 of Act 44 of 2003.]

(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

[Schedule 1 amended by ss. 45 and 46 of Act 51 of 2002.]

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.

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) Except with the prior consent of the municipal council, a councillor may not-

- (a) be a party to or beneficiary under a contract for-
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work otherwise than as a councillor for the municipality;
- (b) obtain a financial interest in any business of the municipality; or
- (c) for a fee or other consideration appear on behalf of any other person before the council or a committee.

(3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2), such consent may only be given to the councillor with the approval of the MEC for local government in the province.

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 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 on whether the councillor should be suspended or removed from office.

(5) The Commissions Act, 1947 (Act 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).

[Subitem (5) substituted by s. 46 of Act 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

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) be a party to a contract for-
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work for the municipality otherwise than as a staff member;
- (b) obtain a financial interest in any business of the municipality; or
- (c) be engaged in any business, trade or profession other than the work of the municipality.

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.

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 added by s. 29 of Act 44 of 2003.]

Schedule 3 LEGISLATION AMENDED

1

Sections 31 and 32 of, and Schedule 5 to, the Municipal Structures Act are hereby repealed.

2

Section 27 of the Municipal Structures Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

- '(d) contravenes a provision of the Code of Conduct for Councillors set out in Schedule 1 of the Local Government: Municipal Systems Act, 2000, and is removed from office in terms of the Code;'

3

Section 81 of the Municipal Structures Act is hereby amended by the substitution for subsection (5) of the following subsection:

- '(5) When participating in the proceedings of a municipal council a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 1 of the Local Government: Municipal Systems Act, 2000.'

4

Section 82 of the Municipal Structures Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

- '(2) A person appointed as municipal manager must have the relevant skills and expertise to perform the duties associated with that post.'

5

Schedule 4 of the Public Finance Management Act, 1999 (Act 1 of 1999), is hereby amended by the addition of the following item:

'2. Fines and estreated bails paid in respect of offences and alleged offences in terms of-

- (a) by-laws enacted by municipalities; or
- (b) national or provincial legislation, the administration of which is assigned to municipalities.'

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT ACT 44 OF 2003

[ASSENTED TO 22 JANUARY 2004]

[DATE OF COMMENCEMENT: 1 AUGUST 2004]

(Unless otherwise indicated)

(English text signed by the President)

ACT

To amend the Local Government: Municipal Systems Act, 2000, so as to delete certain definitions and insert others; to make new provision regarding the assignment of functions or powers to municipalities; to provide for the submission of annual performance reports by municipalities; to provide for the establishment of municipal entities; and to provide for matters connected therewith.

1 Amends section 1 of the Local Government: Municipal Systems Act 32 of 2000, as follows: paragraph (a) inserts the definition of 'board of directors'; paragraph (b) inserts the definition of 'effective control'; paragraph (c) inserts the definition of 'external service provider'; paragraph (d) inserts the definition of 'multi-jurisdictional service utility'; paragraph (e) substitutes the definition of 'municipal entity'; paragraph (f) inserts the definition of 'Municipal Finance Management Act'; paragraph (g) inserts the definition of 'National Treasury'; paragraph (h) inserts the definition of 'parent municipality'; paragraph (i) deletes the definition of 'ownership control'; paragraph (j) inserts the definition of 'private company'; and paragraph (k) substitutes the definition of 'service utility'.

2 and 3 Substitute respectively sections 9 and 10 of the Local Government: Municipal Systems Act 32 of 2000.

4 and 5 Insert respectively sections 10A and 21A and 21B in the Local Government: Municipal Systems Act 32 of 2000.

6 Substitutes section 46 of the Local Government: Municipal Systems Act 32 of 2000.

7 Amends section 55 (2) of the Local Government: Municipal Systems Act 32 of 2000 by substituting paragraph (c).

8 Amends section 57 of the Local Government: Municipal Systems Act 32 of 2000 by inserting subsections (4A) and (4B).

9 Repeals section 58 of the Local Government: Municipal Systems Act 32 of 2000.

10 Amends section 74 of the Local Government: Municipal Systems Act 32 of 2000 by substituting subsection (1).

11 Amends section 78 of the Local Government: Municipal Systems Act 32 of 2000,

as follows: paragraph (a) substitutes subsection (3); and paragraph (b) adds subsection (6).

12 Substitutes section 80 of the Local Government: Municipal Systems Act 32 of 2000.

13 Amends section 81 (2) of the Local Government: Municipal Systems Act 32 of 2000, as follows: paragraph (a) substitutes paragraph (a) (v); and paragraph (b) inserts paragraph (bA).

14 Repeals section 82 of the Local Government: Municipal Systems Act 32 of 2000.

15 Amends section 83 (1) of the Local Government: Municipal Systems Act 32 of 2000 by substituting paragraph (a).

[Date of commencement of s. 15: 1 December 2004.]

16 Amends Part 4 of Chapter 8 of the Local Government: Municipal Systems Act 32 of 2000 by substituting the heading.

17 Amends Chapter 8 of the Local Government: Municipal Systems Act 32 of 2000 by inserting Part 4A (section 86A).

18 Inserts Chapter 8A Parts 1 (section 86B), 2 (sections 86C, 86D, 86E, 86F and 86G), and 3 (sections 86H, 86I, 86J and 86K) and the heading to Part 4 in the Local Government: Municipal Systems Act 32 of 2000.

19 Substitutes section 87 of the Local Government: Municipal Systems Act 32 of 2000.

20 Amends section 88 of the Local Government: Municipal Systems Act 32 of 2000, as follows: paragraph (a) substitutes the heading; and paragraph (b) substitutes subsection (1).

21 and 22 Substitute respectively sections 89 and 90 of the Local Government: Municipal Systems Act 32 of 2000.

23 Repeals section 91 of the Local Government: Municipal Systems Act 32 of 2000.

24 and 25 Substitute respectively sections 92 and 93 of the Local Government: Municipal Systems Act 32 of 2000.

26 Amends Chapter 8A of the Local Government: Municipal Systems Act 32 of 2000 by inserting Parts 5 (sections 93A, 93B, 93C and 93D), 6 (sections 93E, 93F, 93G, 93H, 93I and 93J) and 7 (sections 93K and 93L).

27 Repeals section 94 and the Part-heading preceding section 94 of the Local Government: Municipal Systems Act 32 of 2000.

28 Amends section 120 (1) of the Local Government: Municipal Systems Act 32 of 2000 by substituting paragraph (a).

29 Amends Schedule 2 to the Local Government: Municipal Systems Act 32 of 2000 by inserting item 14A.

30 Amends the Table of Contents of the Local Government: Municipal Systems Act 32 of 2000, as follows: paragraph (a) substitutes the references to sections 9 and 10; paragraph (b) inserts the reference to section 10A; paragraph (c) inserts the reference to sections 21A and 21B; paragraph (d) substitutes the reference to section 46; paragraph (e)

substitutes the reference to Part 4 of Chapter 8; paragraph (f) inserts the reference to Part 4A and Chapter 8A; paragraph (g) substitutes the references to sections 87, 88, 89 and 90; paragraph (h) deletes the reference to section 91; paragraph (i) substitutes the references to sections 92 and 93; paragraph (j) inserts the reference to Part 5; and paragraph (k) inserts the reference to item 14A of Schedule 2.

31 Transitional provisions

(1) If a municipality has established any corporate body, including a trust, under or in terms of applicable legislation before this Act took effect, such a corporate body continues to exist, despite the provisions of Chapter 8A of the principal Act, until such corporate body is disestablished or liquidated, as the case may be.

(2) A corporate body, including a trust, referred to in subsection (1) must be regarded as a municipal entity for the purposes of this Act, the principal Act and the Local Government: Municipal Finance Management Act, 2003, to the extent that the provisions of those Acts can be applied.

(3) A municipality that has established a corporate body referred to in subsection (1), must within three months after this Act takes effect, publish a list of all such corporate bodies in the relevant *provincial gazette* and make that list public in terms of section 21A of the principal Act.

(4) If, before this Act took effect-

- (a) a municipality or municipal entity has established a company referred to in section 21 of the Companies Act, 1973 (Act 61 of 1973), the municipality or the parent municipality of the municipal entity may, despite that Act, pass a by-law converting the company into a service utility under the sole control of the municipality or parent municipality; or
- (b) two or more municipalities have established a company referred to in section 21 of the Companies Act, 1973 (Act 61 of 1973), those municipalities may, despite that Act, enter into an agreement converting the company into a multi-jurisdictional service utility under the shared control of those municipalities.

(5) A by-law referred to in subsection (4) (a) and an agreement referred to in subsection (4) (b)-

- (a) must substantially comply with sections 86H (2) and 89, respectively, of the principal Act; and
- (b) may provide for such transitional and other provisions as may be necessary to effectively convert the company into a service utility or multi-jurisdictional service utility, as the case may be.

32 Short title and commencement

This Act is called the Local Government: Municipal Systems Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.