

*(English text signed by the President)*

**as amended by**

Public Finance Management Amendment Act 29 of 1999

**ACT**

**To regulate financial management in the national government; to ensure that all revenue, expenditure, assets and liabilities of that government are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in that government; and to provide for matters connected therewith.**

[NB: The long title has been substituted by s. 47 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

ARRANGEMENT OF SECTIONS

[NB: The Arrangement of Sections has been amended by s. 48 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into effect on a date to be determined by the Minister by notice in the *Government Gazette*. See PENDLEX.]

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

### **1 Definitions**

[NB: The definitions of '**department**', '**executive authority**', '**public entity**' and '**treasury**' have been substituted, definitions of '**MEC for finance**', '**provincial department**', '**provincial government business enterprise**', '**provincial public entity**' and '**provincial treasury**' have been inserted and the definitions of '**financial year**', '**irregular expenditure**', '**main division within a vote**', '**Revenue Fund**', '**trading entity**' and '**vote**' have been amended by section 1 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

In this Act, unless the context otherwise indicates-

'**accounting officer**' means a person mentioned in section 36;

**'accounting authority'** means a body or person mentioned in section 49;

**'Accounting Standards Board'** means the board established in terms of section 87;

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

**'constitutional institution'** means an institution listed in Schedule 1;

**'department'** means a national department;

**'executive authority'**-

(a) in relation to a national department, means the Cabinet member who is accountable to Parliament for that department; and

(b) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls;

**'financial year'**-

(a) means a year ending 31 March; or

(b) in relation to a national public entity that existed when this Act took effect and that has a different financial year in terms of other legislation, means that financial year, provided the National Treasury has approved that other financial year;

**'financial statements'** means statements consisting of at least-

(a) a balance sheet;

(b) an income statement;

(c) a cash-flow statement;

(d) any other statements that may be prescribed; and

(e) any notes to these statements;

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

**'generally recognised accounting practice'** means an accounting practice complying in material respects with standards issued by the Accounting Standards Board;

**'irregular expenditure'** means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including-

(a) this Act; or

(b) the State Tender Board Act, 1968 (Act 86 of 1968), or any regulations made in terms of that Act;

**'main division within a vote'** means one of the main segments into which a vote is divided and which-

(a) specifies the total amount which is appropriated for the items under that segment; and

(b) is approved by Parliament as part of the vote;

**'Minister'** means the Minister of Finance;

**'national department'** means-

(a) a department listed in Schedule 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excluding a provincial administration; or

(b) an organisational component listed in Schedule 3 of that Act;

**'national government business enterprise'** means an entity which-

(a) is a juristic person under the ownership control of the national executive;

(b) has been assigned financial and operational authority to carry on a business activity;

(c) as its principal business, provides goods or services in accordance with ordinary business principles; and

- (d) is financed fully or substantially from sources other than-
- (i) the National Revenue Fund; or
  - (ii) by way of a tax, levy or other statutory money;

**'national public entity'** means-

- (a) a national government business enterprise; or
- (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is-
  - (i) established in terms of national legislation ;
  - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
  - (iii) accountable to Parliament;

**'National Treasury'** means the National Treasury established by section 5;

**'overspending'**-

- (a) in relation to a vote, means when expenditure under the vote exceeds the amount appropriated for that vote; or
- (b) in relation to a main division within a vote, means when expenditure under the main division exceeds the amount appropriated for that main division, subject to section 43;

**'ownership control'**, in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities:

- (a) To appoint or remove all, or the majority of, the members of that entity's board of directors or equivalent governing body;
- (b) to appoint or remove that entity's chief executive officer;
- (c) to cast all, or the majority of, the votes at meetings of that board of directors or equivalent governing body; or
- (d) to control all, or the majority of, the voting rights at a general meeting of that entity;

**'prescribe'** means prescribe by regulation or instruction in terms of section 76;

**'public entity'** means a national public entity;

**'Revenue Fund'** means-

- (a) the National Revenue Fund mentioned in section 213 of the Constitution;

**'this Act'** includes any regulations and instructions in terms of section 69, 76, 85 or 91;

**'trading entity'** means an entity operating within the administration of a department for the provision or sale of goods or services, and established-

- (a) in the case of a national department, with the approval of the National Treasury;

**'treasury'** means the National Treasury;

**'unauthorised expenditure'** means-

- (a) overspending of a vote or a main division within a vote;
- (b) expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division;

**'vote'** means one of the main segments into which an appropriation Act is divided and which-

- (a) specifies the total amount which is usually appropriated per department in an appropriation Act; and
- (b) is separately approved by Parliament before it approves the relevant draft appropriation Act as such.

## 2 Object of this Act

The object of this Act is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which this Act applies.

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

(1) This Act, to the extent indicated in the Act, applies to-

- (a) departments;
- (b) public entities listed in Schedule 2 or 3;
- (c) constitutional institutions; and
- (d) Parliament, subject to subsection (2).

[NB: Para. (d) has been substituted by s. 2 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) To the extent that a provision of this Act applies to-

- (a) Parliament, any controlling and supervisory functions of the National Treasury in terms of that provision are performed by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, acting jointly.

[NB: A para. (b) has been added by s. 2 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(3) In the event of any inconsistency between this Act and any other legislation, this Act prevails.

### **4 Amendments to this Act**

Draft legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament-

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft legislation.

## **CHAPTER 2**

### **NATIONAL TREASURY AND NATIONAL REVENUE FUND (ss 5-16)**

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

#### ***National Treasury (ss 5-10)***

### **5 Establishment**

(1) A National Treasury is hereby established, consisting of-

- (a) the Minister, who is the head of the Treasury; and
- (b) the national department or departments responsible for financial and fiscal matters.

(2) The Minister, as the head of the National Treasury, takes the policy and other decisions of the Treasury, except those decisions taken as a result of a delegation or instruction in terms of section 10.

### **6 Functions and powers**

(1) The National Treasury must-

- (a) promote the national government's fiscal policy framework and the co-ordination of macro-economic policy;
- (b) co-ordinate intergovernmental financial and fiscal relations;
- (c) manage the budget preparation process;
- (d) exercise control over the implementation of the annual national budget, including any adjustments budgets;
- (e) facilitate the implementation of the annual Division of Revenue Act;
- (f) monitor the implementation of provincial budgets;
- (g) promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of departments, public entities and constitutional institutions; and
- (h) perform the other functions assigned to the National Treasury in terms of this Act.

(2) To the extent necessary to perform the functions mentioned in subsection (1), the National Treasury-

(a) must prescribe uniform treasury norms and standards;

(b) must enforce this Act and any prescribed norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems, in national departments;

(c) must monitor and assess the implementation of this Act, including any prescribed norms and standards, in national public entities and in constitutional institutions;

[NB: Para. (c) has been substituted by s. 3 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(d) may assist departments and constitutional institutions in building their capacity for efficient, effective and transparent financial management;

(e) may investigate any system of financial management and internal control in any department, public entity or constitutional institution;

(f) must intervene by taking appropriate steps, which may include steps in terms of section 100 of the Constitution or the withholding of funds in terms of section 216 (2) of the Constitution, to address a serious or persistent material breach of this Act by a department, public entity or constitutional institution; and

(g) may do anything further that is necessary to fulfil its responsibilities effectively.

(3) Subsections (1) (g) and (2) apply to public entities listed in Schedule 2 only to the extent provided for in this Act.

### **7 Banking, cash management and investment framework**

(1) The National Treasury must prescribe a framework within which departments, public entities listed in Schedule 3 and constitutional institutions must conduct their cash management.

(2) A department authorised to open a bank account in terms of the prescribed framework, a public entity or a constitutional institution may open a bank account only-

(a) with a bank registered in South Africa and approved in writing by the National Treasury; and

(b) after any prescribed tendering procedures have been complied with.

(3) A department, public entity listed in Schedule 3 or constitutional institution may not open a bank account abroad or with a foreign bank except with the written approval of the National Treasury.

(4) The National Treasury may prescribe an investment policy for public entities, constitutional institutions and those departments authorised to open a bank or other account in terms of the prescribed framework.

(5) A bank which has opened a bank account for a department, a public entity listed in Schedule 3 or a constitutional institution, or any other institution that holds money for a department, a public entity listed in Schedule 3 or a constitutional institution, must promptly disclose information regarding the account when so requested by the National Treasury or the Auditor-General.

[NB: Sub-s. (5) has been substituted by s. 4 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **8 Annual consolidated financial statements**

(1) The National Treasury must-

(a) prepare consolidated financial statements in accordance with generally recognised accounting practice for each financial year in respect of-

(i) national departments;

(ii) public entities under the ownership control of the national executive;

(iii) constitutional institutions;

(iv) the South African Reserve Bank;

(v) the Auditor-General; and

(vi) Parliament; and

(b) submit those statements for audit to the Auditor-General within three months after the end of that financial year.

(2) The Auditor-General must audit the consolidated financial statements and submit an audit report on the statements to the National Treasury within three months of receipt of the statements.

(3) The Minister must submit the consolidated financial statements and the audit report on those statements within one month of receiving the report from the Auditor-General, to Parliament for tabling in both Houses.

(4) The consolidated financial statements must be made public when submitted to Parliament.

(5) If the Minister fails to submit the consolidated financial statements and the Auditor-General's audit report on those statements to Parliament within seven months after the end of the financial year to which those statements relate-

(a) the Minister must submit to Parliament a written explanation setting out the reasons why they were not submitted; and

(b) the Auditor-General may issue a special report on the delay.

### **9 Financial statistics and aggregations**

The National Treasury may annually compile in accordance with international standards, and publish in the national *Government Gazette*, financial statistics and aggregations concerning all spheres of government.

### **10 Delegations by National Treasury**

(1) The Minister may-

(a) in writing delegate any of the powers entrusted to the National Treasury in terms of this Act, to the head of a department forming part of the National Treasury, or instruct that head of department to perform any of the duties assigned to the National Treasury in terms of this Act.

[NB: A para. (b) has been added by s. 5 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) A delegation, instruction or request in terms of subsection (1) to the head of a department forming part of the National Treasury-

(a) is subject to any limitations or conditions that the Minister may impose;

(b) may authorise that head, in the case of subsection (1) (a)-

(i) to sub-delegate, in writing, the delegated power to another National Treasury official, or to the holder of a specific post in the National Treasury, or to the accounting officer of a constitutional institution or a department, or to the accounting authority for a public entity; or

(ii) to instruct another National Treasury official, or the holder of a specific post in the National Treasury, or the accounting officer for a constitutional institution or a department, or the accounting authority for a public entity, to perform the assigned duty; and

[NB: A para. (c) has been inserted by s. 5 (d) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

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

[NB: Sub-s. (2) has been amended by s. 5 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(3) The Minister may confirm, vary or revoke any decision taken by the head of a department forming part of the National Treasury, as a result of a delegation, instruction or request in terms of subsection (1) (a), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2) (b), subject to any rights that may have become vested as a consequence of the decision.

[NB: Sub-s. (3) has been substituted by s. 5 (e) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

## **Part 2**

### **National Revenue Fund (ss 11-16)**

#### **11 Control of National Revenue Fund**

(1) The National Treasury is in charge of the National Revenue Fund and must enforce compliance with the provisions of section 213 of the Constitution, namely that-

(a) all money received by the national government must be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and

(b) no money may be withdrawn from the Fund except-

(i) in terms of an appropriation by an Act of Parliament; or

(ii) as a direct charge against the Fund, subject to section 15 (1) (a) (ii).

(2) Draft legislation that provides for a withdrawal from the National Revenue Fund as a direct charge against the Fund, may be introduced in Parliament only after the Minister has been consulted and has consented to the direct charge.

(3) Money that must be paid into the National Revenue Fund is paid into the Fund by depositing it into a bank account of the Fund in accordance with any requirements that may be prescribed.

(4) The National Treasury must establish appropriate and effective cash management and banking arrangements for the National Revenue Fund.

(5) The National Treasury must ensure that there is at all times sufficient money in the National Revenue Fund.

### **12 Deposits and withdrawals by South African Revenue Services in Revenue Funds**

(1) The South African Revenue Services must promptly deposit into a Revenue Fund all taxes, levies, duties, fees and other moneys collected by it for that Revenue Fund, in accordance with a framework determined by the National Treasury.

(2) The South African Revenue Services may, despite section 15 (1), withdraw money from the National Revenue Fund-

(a) to refund any tax, levy or duty credits or any other charges in connection with taxes, levies or duties;

(b) to make other refunds approved by the National Treasury; or

(c) to transfer to a member of the South African Customs Union any money collected on its behalf.

(3) The National Treasury must promptly transfer all taxes, levies, duties, fees and other moneys collected by the South African Revenue Services for a province and deposited into the National Revenue Fund, to that province's Provincial Revenue Fund.

(4) Withdrawals in terms of subsection (2) or (3) are direct charges against the National Revenue Fund.

### **13 Deposits into National Revenue Fund**

(1) All money received by the national government must be paid into the National Revenue Fund, except money received by-

(a) Parliament;

(b) a national public entity;

(c) the South African Reserve Bank;

(d) the Auditor-General;

(e) the national government from donor agencies which in terms of legislation or the agreement with the donor, must be paid to the Reconstruction and Development Programme Fund;

(f) a national department-

(i) operating a trading entity, if the money is received in the ordinary course of operating the trading entity;

(ii) in trust for a specific person or category of persons or for a specific purpose;

(iii) from another department to render an agency service for that department; or

(iv) if the money is of a kind described in Schedule 4; or

(g) a constitutional institution-

(i) in trust for a specific person or category of persons or for a specific purpose; or

(ii) if the money is of a kind described in Schedule 4.

(2) The exclusion in subsection (1) (b) does not apply to a national public entity which is not listed in Schedule 2 or 3 but which in terms of section 47 is required to be listed.

(3) Draft legislation that excludes money from payment into the National Revenue Fund may be introduced in Parliament only after the Minister has been consulted on the reasonableness of the exclusion and has consented to the exclusion.

(4) Any legislation inconsistent with subsection (1) is of no force and effect to the extent of the inconsistency.

(5) Money received by Parliament, a national public entity listed in Schedule 2 or 3, the South African Reserve Bank or the Auditor-General must be paid into a bank account opened by the institution concerned.

### **14 Withdrawal of exclusions**

(1) The National Treasury may withdraw, from a date determined by it, any exclusion granted to a national department, a constitutional institution or a national public entity in terms of section 13 (1), either with regard to all money or with regard to money of a specific kind received by that department, constitutional institution or public entity, if-

(a) the exclusion is not reasonable within the context of section 213 of the Constitution; or

(b) the National Treasury regards the withdrawal of the exclusion to be necessary for transparency or more effective and accountable financial management.

(2) The exclusion in terms of section 13 (1) of the following public entities may not be withdrawn:

(a) A national government business enterprise which is a company and in which the state is not the sole shareholder; and

(b) the national public entities listed in Schedule 2.

(3) From the date on which the withdrawal of an exclusion in terms of subsection (1) takes effect until the end of the relevant financial year, the National Treasury may transfer money from the National Revenue Fund, as a direct charge against the Fund, to the national department or public entity affected by the withdrawal, provided that the amount of the transfer does not exceed the amount that would otherwise have been excluded from payment into the Fund.

(4) The Minister must promptly inform Parliament of any withdrawal of an exclusion in terms of subsection (1).

### **15 Withdrawals and investments from National Revenue Fund**

(1) Only the National Treasury may withdraw money from the National Revenue Fund, and may do so only-

(a) to provide funds that have been authorised-

(i) in terms of an appropriation by an Act of Parliament; or

(ii) as a direct charge against the National Revenue Fund provided for in the Constitution or this Act, or in any other Act of Parliament provided the direct charge in such a case is listed in Schedule 5;

(b) to refund money invested by a province in the National Revenue Fund; or

(c) to refund money incorrectly paid into, or which is not due to, the National Revenue Fund.

(2) A payment in terms of subsection (1) (b) or (c) is a direct charge against the National Revenue Fund.

(3) (a) The National Treasury may invest temporarily, in the Republic or elsewhere, money in the National Revenue Fund that is not immediately needed.

(b) When money in the National Revenue Fund is invested, the investment, including interest earned, is regarded as part of the National Revenue Fund.

### **16 Use of funds in emergency situations**

(1) The Minister may authorise the use of funds from the National Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds.

(2) The combined amount of any authorisations in terms of subsection (1), may not exceed two per cent of the total amount appropriated in the annual national budget for the current financial year.

(3) An amount authorised in terms of subsection (1) is a direct charge against the National Revenue Fund.

(4) An amount authorised in terms of subsection (1) must-

(a) be reported to Parliament and the Auditor-General within 14 days, or if the funds are authorised for the deployment of the security services, within a period determined by the President; and

(b) be attributed to a vote.

(5) A report to Parliament in terms of subsection (4) (a) must be submitted to the National Assembly for tabling in the Assembly and made public.

(6) Expenditure in terms of subsection (1) must be included either in the next adjustments budget for the financial year in which the expenditure is authorised or in other appropriation legislation tabled in the National Assembly within 120 days of the Minister authorising the expenditure, whichever is the sooner.

[NB: A Chapter 3 has been added by s. 6 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into effect on a date to be determined by the Minister by notice in the *Government Gazette*. See PENDLEX.]

**CHAPTER 4**  
**NATIONAL BUDGETS (ss 26-34)**

[NB: The heading has been substituted by s. 8 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

**26 Annual appropriations**

Parliament must appropriate money for each financial year for the requirements of the state.

[NB: S. 26 has been substituted by s. 9 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

**27 National annual budgets**

(1) The Minister must table the annual budget for a financial year in the National Assembly before the start of that financial year or, in exceptional circumstances, on a date as soon as possible after the start of that financial year, as the Minister may determine.

[NB: A sub-s. (2) has been inserted by s. 10 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(3) An annual budget must be in accordance with a format as may be prescribed, and must at least contain-

- (a) estimates of all revenue expected to be raised during the financial year to which the budget relates;
- (b) estimates of current expenditure for that financial year per vote and per main division within the vote;
- (c) estimates of interest and debt servicing charges, and any repayments on loans;
- (d) estimates of capital expenditure per vote and per main division within a vote for that financial year and the projected financial implications of that expenditure for future financial years;
- (e) estimates of revenue excluded in terms of section 13 (1) from the Revenue Fund for that financial year;

[NB: Para. (e) has been substituted by s. 10 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

- (f) estimates of all direct charges against the Revenue Fund and standing appropriations for that financial year;

[NB: Para. (f) has been substituted by s. 10 (c) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

- (g) proposals for financing any anticipated deficit for that financial year;
- (h) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during that financial year and future financial years;
  - (i) the projected-
    - (i) revenue for the previous financial year;
    - (ii) expenditure per vote, and per main division within the vote, for the previous financial year; and
    - (iii) borrowing for the previous financial year; and
  - (j) any other information as may be prescribed, including any multi-year budget information.

(4) When the annual budget is introduced in the National Assembly, the accounting officer for each department must submit to Parliament measurable objectives for each main division within the department's vote. The treasury may co-ordinate these submissions and consolidate them in one document.

[NB: Sub-s. (4) has been substituted by s. 10 (d) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

**28 Multi-year budget projections**

(1) The Minister must annually table in the National Assembly a multi-year budget projection of-

- (a) the estimated revenue expected to be raised during each year of the multi-year period; and
- (b) the estimated expenditure expected to be incurred per vote during each year of the multi-year period, differentiating between capital and current expenditure.

[NB: Sub-s. (1) has been amended by s. 11 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) A multi-year budget projection tabled by the Minister must contain the Minister's key macro-economic projections.

### **29 Expenditure before annual budget is passed**

(1) If an annual budget is not passed before the start of the financial year to which it relates, funds may be withdrawn in accordance with this section from the Revenue Fund for the services of the state during that financial year as direct charges against the Fund until the budget is passed.

[NB: Sub-s. (1) has been substituted by s. 12 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) Funds withdrawn from a Revenue Fund in terms of subsection (1)-

(a) may be utilised only for services for which funds were appropriated in the previous annual budget or adjustments budget; and

(b) may not-

(i) during the first four months of that financial year, exceed 45 per cent of the total amount appropriated in the previous annual budget;

(ii) during each of the following months, exceed 10 per cent of the total amount appropriated in the previous annual budget; and

(iii) in aggregate, exceed the total amount appropriated in the previous annual budget.

(3) The funds provided for in subsection (1) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the annual budget for that financial year.

[NB: Sub-s. (3) has been substituted by s. 12 (b) and a sub-s. (4) has been added by s. 12 (c) of the Public Finance Management Amendment Act 29 of 1999, provisions which will come into operation on 1 April 2000. See PENDLEX.]

### **30 National adjustments budgets**

(1) The Minister may table an adjustments budget in the National Assembly as and when necessary.

(2) A national adjustments budget may only provide for-

(a) adjustments required due to significant and unforeseeable economic and financial events affecting the fiscal targets set by the annual budget;

(b) unforeseeable and unavoidable expenditure recommended by the national executive or any committee of Cabinet members to whom this task has been assigned ;

(c) any expenditure in terms of section 16;

(d) money to be appropriated for expenditure already announced by the Minister during the tabling of the annual budget;

(e) the shifting of funds between and within votes or to follow the transfer of functions in terms of section 42;

(f) the utilisation of savings under a main division of a vote for the defrayment of excess expenditure under another main division of the same vote in terms of section 43; and

(g) the roll-over of unspent funds from the preceding financial year.

[NB: A s. 31 has been inserted by s. 13 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into effect on a date to be determined by the Minister by notice in the *Government Gazette*. See PENDLEX.]

### **32 Publishing of reports on state of budget**

(1) Within 30 days after the end of each month, the National Treasury must publish in the national *Government Gazette* a statement of actual revenue and expenditure with regard to the National Revenue Fund.

[NB: A. sub-s. (2) has been inserted by s. 14 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(3) The statement must specify the following amounts and compare those amounts in each instance with the corresponding budgeted amounts for the relevant financial year:

- (a) The actual revenue for the relevant period, and for the financial year up to the end of that period;
- (b) the actual expenditure per vote (distinguishing between capital and current expenditure) for that period, and for the financial year up to the end of that period; and
- (c) actual borrowings for that period, and for the financial year up to the end of that period.

(4) The National Treasury may determine-

- (a) the format of the statement of revenue and expenditure; and
- (b) any other detail the statement must contain.

### **33 Withholding of appropriated funds**

The treasury-

(a) may withhold from a department any remaining funds appropriated for a specific function if that function is transferred to another department or any other institution; and

(b) must allocate those remaining funds to that other department or institution.

[NB: S. 33 has been amended by s. 15 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **34 Unauthorised expenditure**

(1) Unauthorised expenditure does not become a charge against a Revenue Fund except when-

- (a) the expenditure is an overspending of a vote and Parliament approves, as a direct charge against the Revenue Fund, an additional amount for that vote which covers the overspending; or
- (b) the expenditure is unauthorised for another reason and Parliament authorises the expenditure as a direct charge against the Revenue Fund.

(2) If Parliament does not approve in terms of subsection (1) (a) an additional amount for the amount of any overspending, that amount becomes a charge against the funds allocated for the following or future financial years under the relevant vote.

[NB: S. 34 has been substituted by s. 16 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX. A s. 35 has been inserted by s. 17 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into effect on a date to be determined by the Minister by notice in the *Government Gazette*. See PENDLEX.]

## **CHAPTER 5**

### **DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS (ss 36-45)**

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

#### ***Appointment of accounting officers (ss 36-37)***

### **36 Accounting officers**

(1) Every department and every constitutional institution must have an accounting officer.

(2) Subject to subsection (3)-

- (a) the head of a department must be the accounting officer for the department; and
- (b) the chief executive officer of a constitutional institution must be the accounting officer for that institution.

(3) The treasury may, in exceptional circumstances, approve or instruct in writing that a person other than the person mentioned in subsection (2) be the accounting officer for-

- (a) a department or a constitutional institution; or
- (b) a trading entity within a department.

[NB: Sub-s. (3) has been amended by s. 18 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(4) The treasury may at any time withdraw in writing an approval or instruction in terms of subsection (3).

[NB: Sub-s. (4) has been substituted by s. 18 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which

will come into operation on 1 April 2000. See PENDLEX.]

(5) The employment contract of an accounting officer for a department, trading entity or constitutional institution must be in writing and, where possible, include performance standards. The provisions of sections 38 to 42, as may be appropriate, are regarded as forming part of each such contract.

### **37 Acting accounting officers**

When an accounting officer is absent or otherwise unable to perform the functions of accounting officer, or during a vacancy, the functions of accounting officer must be performed by the official acting in the place of that accounting officer.

## ***Part 2***

### ***Responsibilities of accounting officers (ss 38-45)***

### **38 General responsibilities of accounting officers**

(1) The accounting officer for a department, trading entity or constitutional institution-

(a) must ensure that that department, trading entity or constitutional institution has and maintains-

(i) effective, efficient and transparent systems of financial and risk management and internal control;

(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;

(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;

(iv) a system for properly evaluating all major capital projects prior to a final decision on the project;

(b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;

(c) must take effective and appropriate steps to-

(i) collect all money due to the department, trading entity or constitutional institution;

(ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and

(iii) manage available working capital efficiently and economically;

(d) is responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;

(e) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation;

(f) must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;

(g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;

[NB: Para. (g) has been substituted by s. 19 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(h) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who-

(i) contravenes or fails to comply with a provision of this Act;

(ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or

(iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;

(i) when transferring funds in terms of the annual Division of Revenue Act, must ensure that the

provisions of that Act are complied with;

(j) before transferring any funds (other than grants in terms of the annual Division of Revenue Act or to a constitutional institution) to an entity within or outside government, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;

(k) must enforce compliance with any prescribed conditions if the department, trading entity or constitutional institution gives financial assistance to any entity or person;

(l) must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the responsible executive authority;

(m) must promptly consult and seek the prior written consent of the National Treasury on any new entity which the department or constitutional institution intends to establish or in the establishment of which it took the initiative; and

(n) must comply, and ensure compliance by the department, trading entity or constitutional institution, with the provisions of this Act.

(2) An accounting officer may not commit a department, trading entity or constitutional institution to any liability for which money has not been appropriated.

### **39 Accounting officers' responsibilities relating to budgetary control**

(1) The accounting officer for a department is responsible for ensuring that-

(a) expenditure of that department is in accordance with the vote of the department and the main divisions within the vote; and

(b) effective and appropriate steps are taken to prevent unauthorised expenditure.

(2) An accounting officer, for the purposes of subsection (1), must-

(a) take effective and appropriate steps to prevent any overspending of the vote of the department or a main division within the vote;

(b) report to the executive authority and the treasury any impending

(i) under collection of revenue due;

(ii) shortfalls in budgeted revenue; and

(iii) overspending of the department's vote or a main division within the vote; and

[NB: Para. (b) has been amended by s. 20 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(c) comply with any remedial measures imposed by the treasury in terms of this Act to prevent overspending of the vote or a main division within the vote.

[NB: Para. (c) has been substituted by s. 20 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **40 Accounting officers' reporting responsibilities**

(1) The accounting officer for a department, trading entity or constitutional institution-

(a) must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards;

(b) must prepare financial statements for each financial year in accordance with generally recognized accounting practice;

(c) must submit those financial statements within two months after the end of the financial year to-

(i) the Auditor-General for auditing; and

(ii) the treasury to enable that treasury to prepare consolidated financial statements in terms of section 8;

[NB: Sub-para. (ii) has been substituted by s. 21 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(d) must submit within five months of the end of a financial year to the treasury and, in the case of a department or trading entity, also to the executive authority responsible for that department or trading entity-

(i) an annual report on the activities of that department, trading entity or constitutional institution during that financial year;

(ii) the financial statements for that financial year after those statements have been audited; and

(iii) the Auditor-General's report on those statements;

[NB: Para. (d) has been amended by s. 21 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(e) must, in the case of a constitutional institution, submit to Parliament that institution's annual report and financial statements referred to in paragraph (d), and the Auditor-General's report on those statements, within one month after the accounting officer received the Auditor-General's audit report; and

(f) is responsible for the submission by the department or constitutional institution of all reports, returns, notices and other information to Parliament, an executive authority, the treasury or the Auditor-General, as may be required by this Act.

[NB: Para. (f) has been substituted by s. 21 (c) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) The Auditor-General must audit the financial statements referred to in subsection (1) (b) and submit an audit report on those statements to the accounting officer within two months of receipt of the statements.

(3) The annual report and audited financial statements referred to in subsection (1) (d) must-

(a) fairly present the state of affairs of the department, trading entity or constitutional institution, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and

(b) include particulars of-

(i) any material losses through criminal conduct, and any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure, that occurred during the financial year;

(ii) any criminal or disciplinary steps taken as a result of such losses, unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure;

(iii) any material losses recovered or written off; and

(iv) any other matters that may be prescribed.

(4) The accounting officer of a department must-

(a) each year before the beginning of a financial year provide the treasury in the prescribed format with a breakdown per month of the anticipated revenue and expenditure of that department for that financial year;

[NB: Para. (a) has been substituted by s. 21 (d) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(b) each month submit information in the prescribed format on actual revenue and expenditure for the preceding month and the amounts anticipated for that month in terms of paragraph (a); and

(c) within 15 days of the end of each month submit to the treasury and the executive authority responsible for that department-

(i) the information for that month;

(ii) a projection of expected expenditure and revenue collection for the remainder of the current financial year; and

(iii) when necessary, an explanation of any material variances and a summary of the steps that are taken to ensure that the projected expenditure and revenue remain within budget.

[NB: Para. (c) has been amended by s. 21 (e) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(5) If an accounting officer is unable to comply with any of the responsibilities determined for accounting officers in this Part, the accounting officer must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

#### **41 Information to be submitted by accounting officers**

An accounting officer for a department, trading entity or constitutional institution must submit to the treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the treasury or the Auditor-General may require.

[NB: S. 41 has been substituted by s. 22 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

#### **42 Accounting officers' responsibilities when assets and liabilities are transferred**

(1) When assets or liabilities of a department are transferred to another department or other institution in terms of legislation or following a reorganisation of functions, the accounting officer for the transferring department must-

(a) draw up an inventory of such assets and liabilities; and

(b) provide the accounting officer for the receiving department or other institution with substantiating records, including personnel records of staff to be transferred.

(2) Both the accounting officer for the transferring department and the accounting officer for the receiving department or other institution must sign the inventory when the transfer takes place.

(3) The accounting officer for the transferring department must file a copy of the signed inventory with the treasury and the Auditor-General within 14 days of the transfer.

[NB: Sub-s. (3) has been substituted by s. 23 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

#### **43 Virement between main divisions within votes**

(1) An accounting officer for a department may utilise a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote, unless the treasury directs otherwise.

[NB: Sub-s. (1) has been substituted by s. 24 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) The amount of a saving under a main division of a vote that may be utilised in terms of subsection (1), may not exceed eight per cent of the amount appropriated under that main division.

(3) An accounting officer must within seven days submit a report containing the prescribed particulars concerning the utilisation of a saving in terms of subsection (1), to the executive authority responsible for the department and the treasury.

[NB: Sub-s. (3) has been substituted by s. 24 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(4) This section does not authorise the utilisation of a saving in-

(a) an amount specifically and exclusively appropriated for a purpose mentioned under a main division within a vote;

(b) an amount appropriated for transfer to another institution; and

(c) an amount appropriated for capital expenditure in order to defray current expenditure.

(5) A utilisation of a saving in terms of subsection (1) is a direct charge against the Revenue Fund.

[NB: Sub-s. (5) has been substituted by s. 24 (c) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(6) The National Treasury may by regulation or instruction in terms of section 76 regulate the application of this section.

### **Part 3**

#### ***Other officials of departments and constitutional institutions (ss 44-45)***

#### **44 Assignment of powers and duties by accounting officers**

(1) The accounting officer for a department, trading entity or constitutional institution may-

(a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; or

(b) instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.

(2) A delegation or instruction to an official in terms of subsection (1)-

(a) is subject to any limitations and conditions prescribed in terms of this Act or as the treasury may impose;

[NB: Para. (a) has been substituted by s. 25 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(b) is subject to any limitations and conditions the accounting officer may impose;

(c) may either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and

(d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The accounting officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

Responsibilities of other officials

#### **45 An official in a department, trading entity or constitutional institution-**

(a) must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;

(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;

(c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

(d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and

(e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

### **CHAPTER 6 PUBLIC ENTITIES (ss 46-62)**

#### ***Part 1 Application of this Chapter (ss 46-48)***

#### **46 Application**

The provisions of this Chapter apply, to the extent indicated, to all public entities listed in Schedule 2 or 3.

#### **47 Unlisted public entities**

(1) The Minister, by notice in the national *Government Gazette*-

(a) must amend Schedule 3 to include in the list all public entities that are not listed; and

(b) may make technical changes to the list.

(2) The accounting authority for a public entity that is not listed in either Schedule 2 or 3 must, without delay, notify the National Treasury, in writing, that the public entity is not listed.

(3) Subsection (2) does not apply to an unlisted public entity that is a subsidiary of a public entity, whether the latter entity is listed or not.

(4) The Minister may not list the following institutions in Schedule 3:

(a) A constitutional institution, the South African Reserve Bank and the Auditor-General;

(b) any public institution which functions outside the sphere of national government; and

[NB: Para. (b) has been substituted by s. 26 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(c) any institution of higher education.

## **48 Classification of public entities**

(1) The Minister may by notice in the national *Government Gazette* classify public entities listed in Schedule 3 in accordance with the relevant definitions set out in section 1, as-

(a) national government business enterprises; and

(b) national public entities.

[NB: Sub-s. (1) has been substituted by s. 27 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) A public entity is for the purposes of this Act regarded as belonging to the class in which it is classified in terms of subsection (1).

## **Part 2**

### ***Accounting authorities for public entities (ss 49-55)***

## **49 Accounting authorities**

(1) Every public entity must have an authority which must be accountable for the purposes of this Act.

(2) If the public entity-

(a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or

(b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority.

(3) The treasury, in exceptional circumstances, may approve or instruct that another functionary of a public entity must be the accounting authority for that public entity.

[NB: Sub-s. (3) has been substituted by s. 28 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(4) The treasury may at any time withdraw an approval or instruction in terms of subsection (3).

[NB: Sub-s. (4) has been substituted by s. 28 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(5) A public entity must inform the Auditor-General promptly and in writing of any approval or instruction in terms of subsection (3) and any withdrawal of an approval or instruction in terms of subsection (4).

## **50 Fiduciary duties of accounting authorities**

(1) The accounting authority for a public entity must-

(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;

(b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;

(c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and

(d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

(2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not-

(a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or

(b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.

(3) A member of an accounting authority must-

(a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting

authority; and

(b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

### **51 General responsibilities of accounting authorities**

(1) An accounting authority for a public entity-

(a) must ensure that that public entity has and maintains-

(i) effective, efficient and transparent systems of financial and risk management and internal control;

(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and

(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;

(iv) a system for properly evaluating all major capital projects prior to a final decision on the project;

(b) must take effective and appropriate steps to-

(i) collect all revenue due to the public entity concerned; and

(ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and

(iii) manage available working capital efficiently and economically;

(c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;

(d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;

(e) must take effective and appropriate disciplinary steps against any employee of the public entity who-

(i) contravenes or fails to comply with a provision of this Act;

(ii) commits an act which undermines the financial management and internal control system of the public entity; or

(iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;

(f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament, and to the relevant executive authority or treasury, as may be required by this Act;

[NB: Para. (f) has been substituted by s. 29 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and

(h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.

(2) If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

### **52 Annual budget and corporate plan by Schedule 2 public entities and government business enterprises**

The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or government business enterprise, and to the treasury, at least one month, or another period agreed with the National Treasury, before the start of its financial year-

(a) a projection of revenue, expenditure and borrowings for that financial year in the prescribed format; and

(b) a corporate plan in the prescribed format covering the affairs of that public entity or business enterprise

for the following three financial years, and, if it has subsidiaries, also the affairs of the subsidiaries.

[NB: S. 52 has been amended by s. 30 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **53 Annual budgets by non-business Schedule 3 public entities**

- (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.
- (2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.
- (3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.
- (4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.
- (5) The National Treasury may regulate the application of this section by regulation or instruction in terms of section 76.

### **54 Information to be submitted by accounting authorities**

- (1) The accounting authority for a public entity must submit to the treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the treasury or the Auditor-General may require.

[NB: Sub-s. (1) has been substituted by s. 31 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

- (2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) acquisition or disposal of a significant shareholding in a company;
- (d) acquisition or disposal of a significant asset;
- (e) commencement or cessation of a significant business activity; and
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

[NB: Sub-s. (2) has been amended by s. 31 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

- (3) A public entity may assume that approval has been given if it receives no response from the executive authority on a submission in terms of subsection (2) within 30 days or within a longer period as may be agreed to between itself and the executive authority.
- (4) The executive authority may exempt a public entity listed in Schedule 2 or 3 from subsection (2).

### **55 Annual report and financial statements**

- (1) The accounting authority for a public entity-
  - (a) must keep full and proper records of the financial affairs of the public entity;
  - (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for that public entity;
  - (c) must submit those financial statements within two months after the end of the financial year-
    - (i) to the auditors of the public entity for auditing; and
    - (ii) if it is a business enterprise or other public entity under the ownership control of the national

government, to the treasury; and

[NB: Sub-para. (ii) has been substituted by s. 32 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(d) must submit within five months of the end of a financial year to the treasury, to the executive authority responsible for that public entity and , if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General-

(i) an annual report on the activities of that public entity during that financial year;

(ii) the financial statements for that financial year after the statements have been audited; and

(iii) the report of the auditors on those statements.

[NB: Para. (d) has been amended by s. 32 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) The annual report and financial statements referred to in subsection (1) (d) must-

(a) fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned;

(b) include particulars of-

(i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;

(ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;

(iii) any losses recovered or written off;

(iv) any financial assistance received from the state and commitments made by the state on its behalf; and

(v) any other matters that may be prescribed; and

(c) include the financial statements of any subsidiaries.

(3) An accounting authority must submit the report and statements referred to in subsection (1) (d), for tabling in Parliament, to the relevant executive authority through the accounting officer of a department designated by the executive authority.

[NB: Sub-s. (3) has been substituted by s. 32 (c) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(4) The treasury may direct that, instead of a separate report, the audited financial statements of a Schedule 3 public entity which is not a government business enterprise must be incorporated in those of a department designated by the treasury.

[NB: Sub-s. (4) has been substituted by s. 32 (d) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **Part 3**

#### ***Other officials of public entities (ss 56-57)***

##### **56 Assignment of powers and duties by accounting authorities**

(1) The accounting authority for a public entity may-

(a) in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or

(b) instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.

(2) A delegation or instruction to an official in terms of subsection (1)-

(a) is subject to any limitations and conditions the accounting authority may impose;

(b) may either be to a specific individual or to the holder of a specific post in the relevant public entity; and

(c) does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The accounting authority may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.

Responsibilities of other officials

#### **57 An official in a public entity-**

(a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;

(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;

(c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

(d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and

(e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

#### **Part 4**

#### **External auditors (ss 58-62)**

#### **58 Appointment of auditors**

(1) The annual financial statements of a public entity must be audited annually by-

(a) the Auditor-General; or

(b) a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), as an accountant and auditor, and engaged in public practice as such.

(2) A public entity may appoint, as its auditor, a person referred to in subsection (1) (b) only if the audit is not performed by the Auditor-General.

(3) A public entity must consult the Auditor-General on the appointment of an auditor in terms of subsection (2).

#### **59 Discharge of auditors**

(1) An auditor appointed by a public entity in terms of section 58 (1) (b) may not be discharged before the expiry of that auditor's term of appointment except by the executive authority responsible for that public entity acting-

(a) after consultation with the accounting authority for that public entity; and

(b) with the concurrence of the Auditor-General.

(2) If an executive authority intends discharging an auditor in terms of subsection (1), the executive authority must-

(a) in writing give notice of the proposed discharge to the auditor, with reasons; and

(b) give the auditor an opportunity to make written representations to the executive authority and the Auditor-General within 20 days of receipt of the notice.

(3) The Auditor-General must report any discharge of an auditor in terms of this section to Parliament.

#### **60 Duties and powers of auditors**

(1) An auditor appointed in terms of section 58 (1) (b) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991).

(2) In exercising the powers and performing the duties as auditor of a public entity the auditor-

(a) has access at all reasonable times to the accounting records, including all books, vouchers, documents and other property of the public entity;

(b) may require from the accounting authority for that public entity such information and explanations as are necessary for the purpose of the audit; and

(c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management.

(3) An auditor appointed in terms of section 58 (1) (b) may consult the Auditor-General or any person in the Office of the Auditor-General concerning any matter relating to the auditing of the public entity concerned.

(4) An auditor appointed in terms of section 58 (1) (b)-

(a) must receive notice of every meeting of the public entity's audit committee; and

(b) may attend, and participate in, any meeting of the audit committee at the expense of the public entity.

### **61 Reports of auditor**

(1) The report of an auditor appointed in terms of section 58 (1) (b) must be addressed to the executive authority responsible for the public entity concerned and must state separately in respect of each of the following matters whether in the auditor's opinion-

(a) the annual financial statements of the public entity fairly present the financial position and the results obtained by the entity in accordance with subsection 55 (1) (b) applied on a basis consistent with that of the preceding year;

(b) if required by the Auditor-General, the performance information furnished in terms of subsection 55 (2) (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and

(c) the transactions that had come to the auditor's attention during auditing were in all material respects in accordance with the mandatory functions of the public entity determined by law or otherwise.

(2) The auditor-

(a) must report to the executive authority responsible for the public entity the results of any investigation carried out under subsection 60 (2) (c); and

(b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should in the public interest be brought to the notice of Parliament.

### **62 Duties and powers of Auditor-General**

(1) The Auditor-General may-

(a) investigate any public entity or audit the financial statements of any public entity if the Auditor-General is not appointed as auditor and the Auditor-General considers it to be in the public interest or upon the receipt of a complaint; and

(b) recover the cost of the investigation or audit from the public entity.

(2) An investigation or audit in terms of section (1) may be carried out either by the Auditor-General or a person appointed by the Auditor-General.

(3) The executive authority responsible for a public entity in respect of which the Auditor-General has issued a special report in terms of subsection (1) or (2), must promptly table the report in the National Assembly.

[NB: Sub-s. (3) has been substituted by s. 33 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(4) The Auditor-General may-

(a) claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the public entity concerned; and

(b) annually report to Parliament on specific and general findings regarding the accountability of public entities.

## **CHAPTER 7**

### **EXECUTIVE AUTHORITIES (ss 63-65)**

#### **63 Financial responsibilities of executive authorities**

(1) (a) Executive authorities of departments must perform their statutory functions within the limits of the funds authorised for the relevant vote.

(b) In performing their statutory functions executive authorities must consider the monthly reports submitted to them in terms of section 39 (2) (b) and 40 (4) (c).

(2) The executive authority responsible for a public entity under the ownership control of the national executive must exercise that executive's ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive.

[NB: Sub-s. (2) has been substituted by s. 34 of the Public Finance Management Amendment Act 29 of 1999, a provision which will

come into operation on 1 April 2000. See PENDLEX.]

#### **64 Executive directives having financial implications**

(1) Any directive by an executive authority of a department to the accounting officer of the department having financial implications for the department must be in writing.

(2) If implementation of the directive is likely to result in unauthorised expenditure, the accounting officer will be responsible for any resulting unauthorised expenditure unless the accounting officer has informed the executive authority in writing of the likelihood of that unauthorised expenditure.

(3) Any decision of the executive authority to proceed with the implementation of the directive, and the reasons for the decision, must be in writing, and the accounting officer must promptly file a copy of this document with the National Treasury and the Auditor-General.

[NB: Sub-s. (3) has been substituted by s. 35 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

#### **65 Tabling in legislatures**

(1) The executive authority responsible for a department or public entity must table in the National Assembly.-

(a) the annual report and financial statements referred to in section 40 (1) (d) or 55 (1) (d) and the audit report on those statements, within one month after the accounting officer for the department or the accounting authority for the public entity received the audit report; and

(b) the findings of a disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83.

[NB: Sub-s. (1) has been amended by s. 36 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) If an executive authority fails to table, in accordance with subsection (1) (a), the annual report and financial statements of the department or the public entity, and the audit report on those statements, in the relevant legislature within six months after the end of the financial year to which those statements relate-

(a) the executive authority must table a written explanation in the legislature setting out the reasons why they were not tabled; and

(b) the Auditor-General may issue a special report on the delay.

### **CHAPTER 8**

#### **LOANS, GUARANTEES AND OTHER COMMITMENTS (ss 66-75)**

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

##### ***General principles (ss 66-70)***

#### **66 Restrictions on borrowing, guarantees and other commitments**

(1) An institution to which this Act applies may not borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that institution or the Revenue Fund to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction-

(a) is authorised by this Act; and

(b) in the case of public entities, is also authorised by other legislation not in conflict with this Act.

[NB: A para. (c) has been added by s. 37 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) Only the following persons may borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Revenue Fund to any future financial commitment:

(a) Transactions that bind or may bind the National Revenue Fund: the Minister or, in the case of the issue of a guarantee, indemnity or security, the responsible Cabinet member acting with the concurrence of the Minister in terms of section 70.

[NB: Sub-s. (2) has been substituted by s. 37 (b) and of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(3) Public entities may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that public entity to any future financial commitment:

(a) A public entity listed in Schedule 2: The accounting authority for that Schedule 2 public entity.

(b) A national government business enterprise listed in Schedule 3 and authorised by notice in the national *Government Gazette* by the Minister: The accounting authority for that government business enterprise, subject to any conditions the Minister may impose.

(c) Any other national public entity: The Minister or, in the case of the issue of a guarantee, indemnity or security, the Cabinet member who is the executive authority responsible for that public entity, acting with the concurrence of the Minister in terms of section 70.

[NB: A para. (d) has been added by s. 37 (c) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(4) Constitutional institutions may not borrow money, nor issue a guarantee, indemnity or security, nor enter into any other transaction that binds or may bind the entity to any future financial commitment.

[NB: Sub-s. (4) has been substituted by s. 37 (d) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(5) Despite subsection (4), the Minister may in writing permit a public entity mentioned in subsection (3) (c) or a constitutional institution to borrow money for bridging purposes up to a prescribed limit, including a temporary bank overdraft, subject to such conditions as the Minister may impose.

[NB: Sub-s. (5) has been substituted by s. 37 (e) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(6) A person mentioned in subsection (2) or (3) may not delegate a power conferred in terms of that subsection, except with the prior written approval of the Minister.

(7) A public entity authorised to borrow money-

(a) must annually submit to the Minister a borrowing programme for the year; and

(b) may not borrow money in a foreign currency above a prescribed limit, except when that public entity is a company in which the state is not the only shareholder.

[NB: A s. 67 has been inserted by s. 38 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into effect on a date to be determined by the Minister by notice in the *Government Gazette*. See PENDLEX.]

### **68 Consequences of unauthorised transactions**

If a person, otherwise than in accordance with section 66, lends money to an institution to which this Act applies or purports to issue on behalf of such an institution a guarantee, indemnity or security, or enters into any other transaction which purports to bind such an institution to any future financial commitment, the state and that institution is not bound by the lending contract or the guarantee, indemnity, security or other transaction.

### **69 Regulations on borrowing by public entities**

The Minister may by regulation in terms of section 76 regulate the borrowing of money by or for or on behalf of public entities referred to in section 66 (3) (b) and (c).

[NB: S. 69 has been substituted by s. 39 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **70 Guarantees, indemnities and securities by Cabinet members**

(1) A Cabinet member, with the written concurrence of the Minister (given either specifically in each case or generally with regard to a category of cases and subject to any conditions approved by the Minister), may issue a guarantee, indemnity or security which binds-

(a) the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive; or

(b) a national public entity referred to in section 66 (3) (c) in respect of a financial commitment incurred or to be incurred by that public entity.

(2) Any payment under a guarantee, indemnity or security issued in terms of-

(a) subsection (1) (a), is a direct charge against the National Revenue Fund, and any such payment must in the first instance be defrayed from the funds budgeted for the department that is concerned with the issue of the guarantee, indemnity or security in question; and

(b) subsection (1) (b), is a charge against the national public entity concerned.

(3) A Cabinet member who seeks the Minister's concurrence for the issue of a guarantee, indemnity or security in terms of subsection (1) (a) or (b), must provide the Minister with all relevant information as the Minister may require regarding the issue of such guarantee, indemnity or security and the relevant financial commitment.

(4) The responsible Cabinet member must at least annually report the circumstances relating to any payments under a guarantee, indemnity or security issued in terms of subsection (1) (a) or (b), to the National Assembly for tabling in the National Assembly.

## ***Part 2***

### ***Loans by national government (ss 71-75)***

#### **71 Purposes for which Minister may borrow money**

The Minister may borrow money in terms of section 66 (2) (a) for the following purposes only:

- (a) To finance national budget deficits;
- (b) to refinance maturing debt or a loan paid before the redemption date;
- (c) to obtain foreign currency;
- (d) to maintain credit balances on a bank account of the National Revenue Fund;
- (e) to regulate internal monetary conditions should the necessity arise; or
- (f) any other purpose approved by the National Assembly by special resolution.

#### **72 Signing of loan agreements**

The Minister, on conditions determined by the Minister, may authorise another person to sign a loan agreement when the Minister borrows money in terms of section 66 (2) (a)

#### **73 Interest and repayments of loans to be direct charges**

The following payments in connection with loans are direct charges against the National Revenue Fund:

- (a) the repayment of money borrowed by the Minister in terms of section 66 (2) (a) or repaid in terms of section 74;
- (b) the interest payable on money borrowed; and
- (c) any costs associated with such borrowing and approved by the National Treasury.

#### **74 Repayment, conversion and consolidation of loans**

The Minister may, on such terms and conditions as the Minister may determine, and, when necessary, with the concurrence of the lender-

- (a) repay any loan prior to the redemption date of that loan;
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan.

#### **75 Obligations from lien over securities**

Neither the Minister, nor the National Treasury is responsible for the fulfillment of any obligation resulting from any lien, whether expressed, implied or construed, held over any security issued in terms of this Act, despite the fact that the Minister or the National Treasury was notified of the lien.

## **CHAPTER 9**

### **GENERAL TREASURY MATTERS (ss 76-80)**

#### **76 Treasury regulations and instructions**

(1) The National Treasury must make regulations or issue instructions applicable to departments, concerning-

- (a) any matter that must be prescribed for departments in terms of this Act;
- (b) the recovery of losses and damages;
- (c) the handling of, and control over, trust money and property;
- (d) the rendering of free services;

- (e) the writing off of losses of state money or other state assets or amounts owed to the state;
- (f) liability for losses and damages and procedures for recovery;
- (g) the cancellation or variation of contracts to the detriment of the state;
- (h) the settlement of claims by or against the state;
  - (i) the waiver of claims by the state;
- (j) the remission of money due to the Revenue Fund, refunds of revenue and payments from the Revenue Fund, as an act of grace;
- (k) the alienation, letting or other disposal of state assets; and
- (l) gifts or donations by or to the state.

(2) The National Treasury may make regulations or issue instructions applicable to departments, concerning-

- (a) any matter that may be prescribed for departments in terms of this Act;
- (b) the charging of expenditure against particular votes;
- (c) the establishment of and control over trading entities;
- (d) the improvement and maintenance of immovable state assets;
- (e) fruitless and wasteful, unauthorised and irregular expenditure;
- (f) the determination of any scales of fees, other charges or rates relating to revenue accruing to, or expenditure from, a Revenue Fund;
- (g) the treatment of any specific expenditure;
- (h) vouchers or other proofs of receipts or payments, which are defective or have been lost or damaged;
  - (i) assets which accrue to the state by operation of any law; or
- (j) any other matter that may facilitate the application of this Act.

(3) Regulations in terms of subsection (1) or (2) may prescribe matters for which the prior approval of a treasury must be obtained.

(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning-

- (a) any matter that may be prescribed for all institutions in terms of this Act;
- (b) financial management and internal control;
- (c) the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
- (d) audit committees, their appointment and their functioning;
- (e) internal audit components and their functioning;
- (f) the administration of this Act; and
- (g) any other matter that may facilitate the application of this Act.

(5) A treasury regulation or instruction in terms of this section may-

- (a) differentiate between different categories of-
  - (i) institutions to which this Act applies;
  - (ii) accounting officers; or
  - (iii) accounting authorities; or
- (b) be limited in its application to a specific category of-
  - (i) institutions to which this Act applies;
  - (ii) accounting officers; or
  - (iii) accounting authorities.

## **77 Audit committees**

An audit committee-

(a) must consist of at least three persons of whom, in the case of a department-

(i) one must be from outside the public service;

(ii) the majority may not be persons in the employ of the department, except with the approval of the treasury; and

[NB: Sub-para. (ii) has been substituted by s. 40 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(iii) the chairperson may not be in the employ of the department;

(b) must meet at least twice a year; and

(c) may be established for two or more departments or institutions if the treasury consider it to be more economical.

[NB: Para. (c) has been substituted by s. 40 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

## **78 Publishing of draft treasury regulations for public comment**

Draft regulations in terms of section 76 must be published for public comment in the national *Government Gazette* before their enactment.

## **79 Departures from treasury regulations, instructions or conditions**

The National Treasury may on good grounds approve a departure from a treasury regulation or instruction or any condition imposed in terms of this Act and must promptly inform the Auditor-General in writing when it does so.

## **80 Determination of interest rates for debt owing to state**

(1) The Minister, by notice in the national *Government Gazette*, must determine-

(a) a uniform interest rate applicable to loans granted out of the Revenue Fund; and

(b) a uniform interest rate applicable to all other debts which must be paid into the Revenue Fund .

[NB: Sub-s. (1) has been substituted by s. 41 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(2) An interest rate determined in terms of subsection (1) (b) may differentiate between different categories of debt.

# **CHAPTER 10 FINANCIAL MISCONDUCT (ss 81-86)**

## **Part 1 Disciplinary proceedings (ss 81-85)**

### **81 Financial misconduct by officials in departments and constitutional institutions**

(1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently-

(a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or

(b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.

(2) An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

### **82 Financial misconduct by treasury officials**

An official of the treasury to whom a power or duty is assigned in terms of section 10 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

[NB: S. 82 has been substituted by s. 42 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

### **83 Financial misconduct by accounting authorities and officials of public entities**

(1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority willfully or negligently-

(a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or

(b) makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

#### **84 Applicable legal regime for disciplinary proceedings**

A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85.

#### **85 Regulations on financial misconduct procedures**

(1) The Minister must make regulations prescribing-

(a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury and the Auditor-General, including-

(i) particulars of the alleged financial misconduct; and

(ii) the steps taken in connection with such financial misconduct;

[NB: Para. (a) has been amended by s. 43 (a) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(b) matters relating to the investigation of allegations of financial misconduct;

(c) the circumstances in which the National Treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;

[NB: Para. (c) has been substituted by s. 43 (b) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(d) the circumstances in which a disciplinary board which hears a charge of financial misconduct must include a person whose name appears on a list of persons with expertise in state finances or public accounting compiled by the National Treasury;

(e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, and the Auditor-General; and

[NB: Para. (e) has been substituted by s. 43 (c) of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

(f) any other matters to the extent necessary to facilitate the object of this Chapter.

(2) A regulation in terms of subsection (1) may-

(a)

differentiate between different categories of-

(i) accounting officers;

(ii) accounting authorities;

(iii) officials; and

(iv) institutions to which this Act applies; and

(b) be limited in its application to a particular category of accounting officers, accounting authorities, officials or institutions only.

### **Part 2 Criminal proceedings (s 86)**

#### **86 Offences and penalties**

(1) An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five

years, if that accounting officer willfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.

(2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55.

(3) Any person, other than a person mentioned in section 66 (2) or (3), who purports to borrow money or to issue a guarantee, indemnity or security for or on behalf of a department, public entity or constitutional institution, or who enters into any other contract which purports to bind a department, public entity or constitutional institution to any future financial commitment, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

## **CHAPTER 11** **ACCOUNTING STANDARDS BOARD (ss 87-91)**

[Date of commencement of Chapter 11: 2 March 1999.]

### **87 Establishment**

(1) The Minister by regulation in terms of section 91 must establish a board to be known as the Accounting Standards Board.

(2) The Accounting Standards Board is a juristic person.

[Date of commencement of s. 87: 2 March 1999.]

### **88 Composition**

(1) The Accounting Standards Board consists of no more than 10 members as the Minister may determine.

(2) The Minister, after consulting the Auditor-General, appoints the members of the Board.

(3) The Board may establish its own operating procedures.

[Date of commencement of s. 88: 2 March 1999.]

### **89 Functions of Board**

(1) The Accounting Standards Board must-

(a) set standards of generally recognised accounting practice as required by section 216 (1) (a) of the Constitution, for the annual financial statements of-

(i) departments;

(ii) public entities;

(iii) constitutional institutions;

(iv) municipalities and boards, commissions, companies, corporations, funds or other entities under the ownership control of a municipality; and

(v) Parliament and the provincial legislatures;

[Sub-para. (v) substituted by s. 44 of Act 29 of 1999.]

(b) prepare and publish directives and guidelines concerning the standards set in terms of paragraph (a);

(c) recommend to the Minister effective dates of implementation of these standards for the different categories of institutions to which these standards apply; and

(d) perform any other function incidental to advancing financial reporting in the public sector.

(2) In setting standards the Board must take into account all relevant factors, including-

(a) best accounting practices, both locally and internationally; and

(b) the capacity of the relevant institutions to comply with the standards.

(3) The Board may set different standards for different categories of institutions to which these standards apply.

(4) The standards set by the Board must promote transparency in and effective management of revenue, expenditure, assets and liabilities of the institutions to which these standards apply.

[Date of commencement of s. 89: 2 March 1999.]

### **90 Powers of Board**

The Accounting Standards Board may do all that is necessary or expedient to perform its functions effectively, which includes the

power to-

- (a) determine its own staff establishment and appoint employees to posts on its staff establishment;
- (b) obtain the services of any person or entity to perform any specific act or function;
- (c) confer with any person or entity;
- (d) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
- (e) insure itself against any loss, damage, risk or liability;
- (f) perform legal acts, or institute or defend any legal action in its own name;
- (g) do research and publish reports; and
- (h) do anything that is incidental to the exercise of any of its powers.

[Date of commencement of s. 90: 2 March 1999.]

### **91 Regulations on accounting standards of Board**

(1) The Minister, after consulting the Auditor-General, may make regulations-

- (a) concerning the qualifications, remuneration, term of office and removal of members of the Accounting Standards Board, the filling of vacancies, the chairperson of the Board, and the finances and administration of the Board;
- (b) prescribing the standards set by the Board in terms of section 89; and
- (c) concerning any other matter that may facilitate the proper functioning of the Board or the implementation of those standards.

(2) The Minister must consult the Board on the implementation date of a regulation made in terms of subsection (1) (b).

(3) Different regulations may be made in terms of subsection (1) (b) for different categories of institutions to which the standards set in terms of section 89 apply.

(4) Draft regulations prescribing standards in terms of subsection (1) (b) must be published for public comment in the national *Government Gazette* before their enactment.

[Date of commencement of s. 91: 2 March 1999.]

## **CHAPTER 12 MISCELLANEOUS (ss 92-95)**

### **92 Exemptions**

The Minister, by notice in the national *Government Gazette*, may exempt any institution to which this Act applies, or any category of those institutions, from any specific provisions of this Act for a period determined in the notice.

### **93 Transitional provisions**

(1) Anything done in terms of a provision of the Exchequer Act, 1975 (Act 66 of 1975), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

(2) All treasury regulations and instructions made or issued in terms of the Exchequer Act, 1975, remain in force until repealed in terms of section 76 of this Act.

(3) Until the Accounting Standards Board is established, the National Treasury may perform the functions of the Board.

(4) The provisions of the Revenue Funds Interim Arrangements Act, 1997 (Act 95 of 1997), despite the fact that they have lapsed, must be regarded as forming part of this Act until 1 April 2000.

[Date of commencement of sub-s. (4): 2 March 1999.]

### **94 Repeal of legislation**

The legislation mentioned in Schedule 6 is repealed to the extent specified in the third column.

### **95 Short title and commencement**

This Act is called the Public Finance Management Act, 1999, and takes effect on 1 April 2000 except-

- (a) Chapter 11 and section 93 (4), which take effect on the date of publication of this Act; and

(b) those provisions determined by the Minister by notice in the national *Government Gazette*, which will take effect on a date determined in the notice, but which may not be a date later than 1 April 2003.

**Schedule 1**  
**CONSTITUTIONAL INSTITUTIONS**

1. The Public Protector.
2. The Human Rights Commission.
3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
4. The Commission for Gender Equality.
5. The Independent Electoral Commission.
6. The Independent Broadcasting Authority.
7. The Financial and Fiscal Commission.
8. The Commission on the Remuneration of Persons Holding Public Office.
9. The Pan South African Language Board.
10. The Municipal Demarcation Board.

**Schedule 2**  
**MAJOR PUBLIC ENTITIES**

1. Air Traffic and Navigation Services Company
2. Airports Company
3. Alexander Bay Development Corporation
4. Armaments Corporation of South Africa
5. Atomic Energy Corporation of South Africa Limited
6. Central Energy Fund
7. DENEL
8. Development Bank of Southern Africa
9. ESKOM
10. Independent Development Trust
11. Industrial Development Corporation of South Africa Limited
12. Land and Agricultural Bank of South Africa
13. SA Abattoir Corporation
14. SA Broadcasting Commission
15. SA Forestry Company Limited
16. SA Post Office Limited
17. Telkom SA Limited
18. Transnet Limited
19. Trans-Caledon Tunnel Authority
20. Any subsidiary or entity under the ownership control of the above public entities

**Schedule 3**  
**OTHER PUBLIC ENTITIES**

[NB: Schedule 3 has been amended by s. 45 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

***Part A***  
***National Public Entities***

1. Any subsidiary or entity under the ownership control of the above public entities

***Part B***  
***National Government Business Enterprises***

1. Albaniekus Waterraad
2. Bala-Bala Farms (Pty) Ltd
3. Bloem Water
4. Bosveld Waterraad
5. Goudveld Water
6. Iniala Farms (Pty) Ltd
7. Kalahari-Oos Waterraad
8. Kalahari-Wes Waterraad
9. Karos-Geelkoppen Waterraad
10. Khula Enterprises
11. Lanok (Pty) Ltd
12. Magalies Water
13. Mhlathuze Water
14. Mjindi Farming (Pty) Ltd
15. Mpendle-Ntambanana Agricultural Company (Pty) Ltd
16. Namakwa Water
17. Ncera Farms (Pty) Ltd
18. Noord Transvaal Water / Meetse
19. Ntsika Enterprises
20. Overberg Water
21. Pelladrift Water
22. Phalaborwa Water
23. Rand Water Board
24. SA Rail Commuter Corporation Limited
25. Umgeni Water Board
26. Any subsidiary or entity under the ownership control of the above public entities

**Schedule 4**  
**EXCLUSIONS FROM REVENUE FUNDS**

(In terms of section 13 (1) (g))

[NB: The heading has been substituted by s. 46 of the Public Finance Management Amendment Act 29 of 1999, a provision which will come into operation on 1 April 2000. See PENDLEX.]

1. SA Schools Act (covering school fees)

**Schedule 5**  
**DIRECT CHARGES AGAINST NATIONAL REVENUE FUND**

Payments in terms of the following Acts:

1. Remuneration of Public Office Bearers Act, 1998 (Act 20 of 1998) (Covering the President's salary and the salaries of members of Parliament sections 2 (7) and 3 (7));
2. Remuneration and Allowances of Deputy Presidents, Ministers and Deputy Ministers Act, 1994 (Act 53 of 1994) (Covering the salary of the Deputy President section 4(a));
3. Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989) (Covering salaries and allowances of Judges and Judges seconded to governments of other countries in terms of section 2).

**Schedule 6**  
**REPEAL OF LEGISLATION**

(Section 94)

No. and year of Act	Short title	Extent of repeal
<i>(a) Act 66 of 1975</i>	Exchequer Act, 1975	The whole, except sections 28, 29, 30
Act 106 of 1976	Financial Arrangements with the Transkei Act, 1976	The whole
Act 93 of 1977	Financial Arrangements with Bophuthatswana Act, 1977	The whole
Act 105 of 1979	Financial Arrangements with Venda Act, 1979	The whole
Proclamation R85 of 1968	South West Africa Constitution Act, 1968 (Act 39 of 1968)	Part 3
Act 67 of 1980	Railways and Harbours Acts Amendment Act, 1980	Section 19
Act 29 of 1981	Railways and Harbours Acts Amendment Act, 1981	Section 21
Act 118 of 1981	Financial Arrangements with Ciskei Act, 1981	The whole
Act 100 of 1984	Exchequer and Audit Amendment Act, 1984	The whole
Act 9 of 1989	Legal Succession of the South African Transport Services Act, 1989	Schedule 2 Part 6 of the act insofar as it relates to the Exchequer Act, 1975
Act 120 of 1991	Finance Act, 1991	Sections 14, 15 and 16
Act 96 of 1992	Part Appropriation Acts Abolition Act, 1992	The whole
Act 69 of 1993	Exchequer Amendment Act, 1993	The whole
Act 123 of 1993	Finance Act, 1993	The whole
Act 142 of 1993	Exchequer Second Amendment Act, 1993	The whole
Act 182 of 1993	Exchequer Third Amendment Act, 1993	The whole
Act 41 of 1994	Finance Act, 1994	Sections 17 and 18
<i>(b) Act 93 of 1992</i>	Reporting by Public Entities Act, 1992	The whole
<i>(c) Act 66 of 1975</i>	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Transkei
Act 102 of 1976	Finance Act, 1976	Sections 23, 24 and 25 insofar as it is in force in the area of the former Republic of Transkei
<i>(d) Act 29 of 1992</i> <i>(Bophuthatswana)</i>	Exchequer Act, 1992	The whole

Act 16 of 1993 (Bophuthatswana)	Exchequer Amendment Act, 1993	The whole
<i>(e) Act 66 of 1975</i>	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Venda
Act 111 of 1977	Finance Act, 1977	Sections 9, 10 and 11 insofar as it is in force in the area of the former Republic of Venda
Act 94 of 1978	Finance Act, 1978	Sections 12, 13 and 14 insofar as it is in force in the area of the former Republic of Venda
Proclamation R.85 of 1979	Exchequer and Audit Proclamation	Sections 16 and 17 insofar as it is in force in the area of the former Republic of Venda
Act 21 of 1983 (Venda)	Exchequer and Audit Amendment Act, 1983	The whole
Act 18 of 1987 (Venda)	Exchequer and Audit Amendment Act, 1987	The whole
Act 28 of 1989 (Venda)	Exchequer and Audit Amendment Act, 1989	The whole
Proclamation 25 of 1993 (Venda)	Exchequer and Audit Amendment Act, 1993	The whole
<i>(f) Act 28 of 1985 (Ciskei)</i>	Exchequer and Audit Act, 1985	The whole

***PENDLEX: Public Finance Management Act 1 of 1999 after amendment by the Public Finance Management Amendment Act 29 of 1999***

**Long title**

To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith.

**Arrangements of Sections**

PROVINCIAL TREASURIES AND PROVINCIAL REVENUE FUNDS

*Part 1*

*Provincial treasuries*

- 17. Establishment
- 18. Functions and powers
- 19. Annual consolidated financial statements
- 20. Delegations by provincial treasuries

*Part 2*

*Provincial Revenue Funds*

- 21. Control of Provincial Revenue Fund
- 22. Deposits by provincial departments into Provincial Revenue Fund
- 23. Withdrawal of exclusions from Provincial Revenue Funds
- 24. Withdrawals from Provincial Revenue Funds
- 25. Use of funds in emergency situations
- 31. Provincial adjustments budgets
- 35. Unfunded mandates
- 67. No provincial foreign commitments.

**Section 1 - definitions**

'department' means a national or provincial department;

'executive authority'-

(a) in relation to a national department, means the Cabinet member who is accountable to Parliament for that department;

(b) in relation to a provincial department, means the member of the Executive Council of a province who is accountable to the provincial legislature for that department;

(c) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls; and

(d) in relation to a provincial public entity, means the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or in whose portfolio it falls;

**'financial year' - para. (b)**

in relation to a public entity that existed when this Act took effect and that has a different financial year in terms of other legislation, means that financial year, provided the National Treasury has approved that other financial year;

**'irregular expenditure' - para. (c)**

any provincial legislation providing for procurement procedures in that provincial government;

**'main division within a vote' - para. (b)**

is approved by Parliament or a provincial legislature, as may be appropriate, as part of the vote;

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

**'provincial department'** means-

(a) a provincial administration listed in Schedule 1 of the Public Service Act, 1994; or

(b) a department within a provincial administration and listed in Schedule 2 of that Act;

**'provincial government business enterprise'** means an entity which-

(a) is a juristic person under the ownership control of a provincial executive;

(b) has been assigned financial and operational authority to carry on a business activity;

(c) as its principal business, provides goods or services in accordance with ordinary business principles; and

(d) is financed fully or substantially from sources other than-

(i) a Provincial Revenue Fund; or

(ii) by way of a tax, levy or other statutory money;

**'provincial public entity'** means-

(a) a provincial government business enterprise; or

(b) a board, commission, company, corporation, fund or other entity (other than a provincial government business enterprise) which is-

(i) established in terms of legislation or a provincial constitution;

(ii) fully or substantially funded either from a Provincial Revenue Fund or by way of a tax, levy or other money imposed in terms of legislation; and

(iii) accountable to a provincial legislature;

**'provincial treasury'** means a treasury established in terms of section 17;

**'public entity'** means a national or provincial public entity;

**'Revenue Fund' - para. (b)**

a Provincial Revenue Fund mentioned in section 226 of the Constitution;

**'trading entity' - para. (b)**

in the case of a provincial department, with the approval of the relevant provincial treasury acting within a prescribed framework;

**'treasury'** means the National Treasury or a provincial treasury, as may be appropriate in the circumstances;

**'vote' - para. (b)**

is separately approved by Parliament or a provincial legislature, as may be appropriate, before it approves the relevant draft

appropriation Act as such.

### **Section 3 (1) (d)**

Parliament and the provincial legislatures, subject to subsection (2).

### **Section 3 (2) (b)**

a provincial legislature, any controlling and supervisory functions of the National Treasury and a provincial treasury in terms of that provision are performed by the Speaker of the provincial legislature.

### **Section 6 (2) (c)**

must monitor and assess the implementation of this Act, including any prescribed norms and standards, in provincial departments, in public entities and in constitutional institutions;

### **Section 7 (5)**

A bank which has opened a bank account for a department, a public entity listed in Schedule 3 or a constitutional institution, or any other institution that holds money for a department, a public entity listed in Schedule 3 or a constitutional institution, must promptly disclose information regarding the account when so requested by the National Treasury or the Auditor-General, or, in the case of a provincial department or provincial public entity, by the National Treasury, the Auditor-General or the relevant provincial treasury.

### **Section 10 (1) (b)**

in relation to a provincial department or provincial public entity, in writing delegate any of the powers entrusted to the National Treasury in terms of this Act to a provincial treasury, or request that treasury to perform any of the duties assigned to the National Treasury in terms of this Act, as the Minister and the relevant MEC for finance may agree.

### **Section 10 (2) - words preceding para. (a)**

A delegation, instruction or request in terms of subsection (1) to the head of a department forming part of the National Treasury, or to a provincial treasury-

### **Section 10 (2) (c)**

may authorise a provincial treasury, in the case of subsection (1) (b)-

- (i) to sub-delegate, in writing, the delegated power to an official in that provincial treasury, or to the holder of a specific post in that provincial treasury, or to the accounting officer for a provincial department, or to the accounting authority for a provincial public entity; or
- (ii) to instruct an official in that provincial treasury, or the holder of a specific post in that provincial treasury, or the accounting officer for a provincial department, or the accounting authority for a provincial public entity, to perform the assigned duty; and

### **Section 10 (3)**

The Minister may confirm, vary or revoke any decision taken by the head of a department forming part of the National Treasury, or by a provincial treasury, as a result of a delegation, instruction or request in terms of subsection (1) (a) or (b), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2) (b) or (c), subject to any rights that may have become vested as a consequence of the decision.

## **Chapter 3**

### **PROVINCIAL TREASURIES AND PROVINCIAL REVENUE FUNDS**

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

#### ***Provincial treasuries***

### **17 Establishment**

- (1) There is a provincial treasury for each province, consisting of-
  - (a) the MEC for finance in the province, who is the head of the provincial treasury; and
  - (b) the provincial department responsible for financial matters in the province.
- (2) The MEC for finance as the head of a provincial treasury takes the policy and other decisions of the treasury, except those decisions taken as a result of a delegation or instruction in terms of section 20.

### **18 Functions and powers**

- (1) A provincial treasury must-
  - (a) prepare the provincial budget;
  - (b) exercise control over the implementation of the provincial budget;
  - (c) promote and enforce transparency and effective management in respect of revenue, expenditure, assets

and liabilities of provincial departments and provincial public entities; and

(d) ensure that its fiscal policies do not materially and unreasonably prejudice national economic policies.

(2) A provincial treasury-

(a) must issue provincial treasury instructions not inconsistent with this Act;

(b) must enforce this Act and any prescribed national and provincial norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems, in provincial departments;

(c) must comply with the annual Division of Revenue Act, and monitor and assess the implementation of that Act in provincial public entities;

(d) must monitor and assess the implementation in provincial public entities of national and provincial norms and standards;

(e) may assist provincial departments and provincial public entities in building their capacity for efficient, effective and transparent financial management;

(f) may investigate any system of financial management and internal control applied by a provincial department or a provincial public entity;

(g) must intervene by taking appropriate steps, which may include the withholding of funds, to address a serious or persistent material breach of this Act by a provincial department or a provincial public entity;

(h) must promptly provide any information required by the National Treasury in terms of this Act; and

(i) may do anything further that is necessary to fulfil its responsibilities effectively.

### **19 Annual consolidated financial statements**

(1) A provincial treasury must-

(a) prepare consolidated financial statements, in accordance with generally recognised accounting practice, for each financial year in respect of-

(i) provincial departments in the province;

(ii) public entities under the ownership control of the provincial executive of the province; and

(iii) the provincial legislature in the province; and

(b) submit those statements to the Auditor-General within three months after the end of that financial year.

(2) The Auditor-General must audit the consolidated financial statements and submit an audit report on the statements to the provincial treasury of the province concerned within three months of receipt of the statements.

(3) The MEC for finance in a province must submit the consolidated financial statements and the audit report, within one month of receiving the report from the Auditor-General, to the provincial legislature for tabling in the legislature.

(4) The consolidated financial statements must be made public when submitted to the provincial legislature.

(5) If the MEC for finance fails to submit the consolidated financial statements and the Auditor-General's audit report on those statements to the provincial legislature within seven months after the end of the financial year to which those statements relate-

(a) the MEC must submit to the legislature a written explanation setting out the reasons why they were not submitted; and

(b) the Auditor-General may issue a special report on the delay.

### **20 Delegations by provincial treasuries**

(1) The MEC for finance in a province may, in writing, delegate any of the powers entrusted or delegated to the provincial treasury in terms of this Act to the head of the department referred to in section 17 (1) (b), or instruct that head of department to perform any of the duties assigned to the provincial treasury in terms of this Act.

(2) A delegation or instruction in terms of subsection (1) to the head of the department referred to in section 17 (1) (b)-

(a) is subject to any limitations or conditions that the MEC for finance may impose;

(b) may authorise that head-

(i) to, in writing, sub-delegate the delegated power to another treasury official or the holder of a specific post in that treasury, or to the accounting officer for a provincial department, or to the accounting authority for a provincial public entity in the province; or

(ii) to instruct another provincial treasury official or the holder of a specific post in that treasury, or the accounting officer for a provincial department, or the accounting authority for a provincial public entity in the province, to perform the assigned duty; and

(c) does not divest the MEC for finance of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The MEC for finance may confirm, vary or revoke any decision taken by the head of the department referred to in section 17 (1) (b), as a result of a delegation or instruction in terms of subsection (1), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2) (b), subject to any rights that may have become vested as a consequence of the decision.

## ***Part 2*** ***Provincial Revenue Funds***

### **21 Control of Provincial Revenue Funds**

(1) The provincial treasury of a province is in charge of that province's Provincial Revenue Fund and must enforce compliance with the provisions of section 226 of the Constitution, namely that-

(a) all money received by the provincial government must promptly be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and

(b) no money may be withdrawn from the Fund except-

(i) in terms of an appropriation by a provincial Act; or

(ii) as a direct charge against the Fund when it is provided for in the Constitution or a provincial Act.

(2) Money that must be paid into the Provincial Revenue Fund is paid into the Fund by depositing it into a bank account of the Fund in accordance with any requirements that may be prescribed.

(3) A provincial treasury must establish appropriate and effective cash management and banking arrangements for its Provincial Revenue Fund in accordance with the framework that must be prescribed in terms of section 7.

### **22 Deposits into Provincial Revenue Funds**

(1) All money received by a provincial government, including the province's equitable share, and grants made to it, in terms of the annual Division of Revenue Act, must be paid into the province's Provincial Revenue Fund, except money received by-

(a) the provincial legislature in the province;

(b) a provincial public entity in the province;

(c) the provincial government from donor agencies which in terms of legislation or the agreement with the donor, must be paid to the Reconstruction and Development Programme Fund;

(d) a provincial department in the province-

(i) operating a trading entity, if the money is received in the ordinary course of operating the trading entity;

(ii) in trust for a specific person or category of persons or for a specific purpose;

(iii) from another department to render an agency service on behalf of that department;

(iv) in terms of the annual Division of Revenue Act, if the money is exempted by that Act from payment into the Revenue Fund; or

(v) if the money is of a kind described in Schedule 4.

(2) The exclusion in subsection (1) (b) does not apply to a provincial public entity in the province which is not listed in Schedule 3 but which, in terms of section 47, is required to be listed.

(3) Draft legislation that excludes money from payment into a Provincial Revenue Fund may be introduced in Parliament only after the Minister has been consulted on the reasonableness of the exclusion and has consented to the exclusion.

(4) Any legislation inconsistent with subsection (1) is of no force and effect to the extent of the inconsistency.

(5) Money received by a provincial legislature or a provincial public entity listed in Schedule 3 must be paid into a bank account opened by the entity concerned.

### **23 Withdrawal of exclusions from Provincial Revenue Funds**

(1) The National Treasury, after having consulted the relevant provincial treasury, may withdraw, from a date determined by it, any exclusion granted to a provincial department or provincial public entity in terms of section 22 (1), either with regard to all money or with regard to money of a specific kind received by that department or public entity, if-

(a) the exclusion is not reasonable within the context of section 226 of the Constitution; or

(b) the National Treasury regards the withdrawal of the exclusion to be necessary for transparency or more effective and accountable financial management.

(2) The exclusion in terms of section 22 (1) of a provincial government business enterprise which is a company and in which the relevant province is not the sole shareholder, may not be withdrawn, provided the National Treasury has given its prior written approval to the province to participate in a company that is not wholly owned by the province.

(3) From the date on which the withdrawal of an exclusion in terms of subsection (1) takes effect until the end of the relevant financial year, a provincial treasury may transfer money from the Provincial Revenue Fund, as a direct charge against the Fund, to the provincial department or provincial public entity affected by the withdrawal of the exclusion-

(a) if a provincial Act provides for the transfer to be a direct charge; and

(b) provided that the amount of the transfer does not exceed the amount that would otherwise have been excluded from payment into the Fund.

(4) The Minister must promptly inform Parliament of any withdrawal of an exclusion in terms of subsection (1).

### **24 Withdrawals and investments from Provincial Revenue Funds**

(1) Only a provincial treasury may withdraw money from a Provincial Revenue Fund, and may do so only-

(a) to provide funds that have been authorised-

(i) in terms of an appropriation by a provincial Act; or

(ii) as a direct charge against the Provincial Revenue Fund provided for in the Constitution or a provincial Act;

(b) to refund money incorrectly paid into, or which is not due to, the Provincial Revenue Fund; or

(c) to deposit into or invest money in the National Revenue Fund.

(2) A payment in terms of subsection (1) (b) or (c) is a direct charge against a Provincial Revenue Fund if a provincial Act so provides.

(3) (a) A provincial treasury, in accordance with a prescribed framework, may invest temporarily in the Republic money in the province's Provincial Revenue Fund that is not immediately needed.

(b) When money in a Provincial Revenue Fund is invested, the investment, including interest earned, is regarded as part of that Fund.

### **25 Use of funds in emergency situations**

(1) The MEC for finance in a province may authorise the use of funds from that province's Provincial Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest in the province, be postponed to a future appropriation by the provincial legislature.

(2) The combined amount of any authorisations in terms of subsection (1) may not exceed two per cent of the total amount appropriated in the annual provincial budget for the current financial year.

(3) An amount authorised in terms of subsection (1) is a direct charge against the Provincial Revenue Fund if a provincial Act so provides.

(4) An amount authorised in terms of subsection (1) must-

(a) be reported to the provincial legislature and the Auditor-General within 14 days; and

(b) be attributed to a vote.

(5) A report to a provincial legislature in terms of subsection (4) (a) must be submitted to the provincial legislature for tabling in the legislature and made public.

(6) Expenditure in terms of subsection (1) must be included either in the next provincial adjustments budget for the financial year in

which the expenditure is authorised, or in other appropriation legislation tabled in the provincial legislature within 120 days of the MEC for finance in the province authorising the expenditure, whichever is the sooner.

#### **Chapter 4 - Heading**

### **NATIONAL AND PROVINCIAL BUDGETS**

#### **Section 26 - Annual appropriations**

Parliament and each provincial legislature must appropriate money for each financial year for the requirements of the state and the province, respectively.

#### **Section 27 (2)**

The MEC for finance in a province must table the provincial annual budget for a financial year in the provincial legislature not later than two weeks after the tabling of the national annual budget, but the Minister may approve an extension of time for the tabling of a provincial budget.

#### **Section 27 (3) (e)**

estimates of revenue excluded in terms of section 13 (1) or 22 (1) from the relevant Revenue Fund for that financial year;

#### **Section 27 (3) (f)**

estimates of all direct charges against the relevant Revenue Fund and standing appropriations for that financial year;

#### **Section 27 (4)**

When the annual budget is introduced in the National Assembly or a provincial legislature, the accounting officer for each department must submit to Parliament or the provincial legislature, as may be appropriate, measurable objectives for each main division within the department's vote. The relevant treasury may co-ordinate these submissions and consolidate them in one document.

#### **Section 28 (1) - words preceding para. (a)**

The Minister and the MEC for finance in a province must annually table in the National Assembly and in that province's provincial legislature, respectively, a multi-year budget projection of-

#### **Section 29 (1)**

If an annual budget is not passed before the start of the financial year to which it relates, funds may be withdrawn in accordance with this section from the relevant Revenue Fund for the services of the state or the province concerned during that financial year as direct charges against the Fund until the budget is passed.

#### **Section 29 (3)**

The funds provided for in subsection (1) are not additional to funds appropriated for the relevant financial year, and any funds withdrawn in terms of that subsection must be regarded as forming part of the funds appropriated in the relevant annual budget for that financial year.

#### **Section 29 (4)**

This section does not apply in respect of a province unless a provincial Act provides that the withdrawal of funds in terms of this section is a direct charge against that province's Revenue Fund.

#### **Section 31 - Provincial adjustments budgets**

(1) The MEC for finance in a province may table an adjustments budget in the provincial legislature, subject to subsection (3).

(2) An adjustments budget of a province may only provide for-

(a) the appropriation of funds that have become available to the province;

(b) unforeseeable and unavoidable expenditure recommended by the provincial Executive Council of the province within a framework determined by the Minister;

(c) any expenditure in terms of section 25;

(d) money to be appropriated for expenditure already announced by the MEC for finance during the tabling of the annual budget;

(e) the shifting of funds between and within votes or to follow the transfer of functions in terms of section 42;

(f) the utilisation of savings under a main division within a vote for the defrayment of excess expenditure under another main division within the same vote in terms of section 43; and

(g) the roll-over of unspent funds from the preceding financial year.

(3) The Minister may determine the time when an adjustments budget may be tabled in a provincial legislature, as well as the format

for such budgets.

### **Section 32 (2)**

After the end of a prescribed period, but at least quarterly, every provincial treasury must submit to the National Treasury a statement of revenue and expenditure with regard to the Revenue Fund for which that treasury is responsible, for publication in the national *Government Gazette* within 30 days after the end of each prescribed period.

### **Section 33 - words preceding para. (a)**

The relevant treasury-

### **Section 34 - Unauthorised expenditure**

(1) Unauthorised expenditure does not become a charge against a Revenue Fund except when-

(a) the expenditure is an overspending of a vote and Parliament or a provincial legislature, as may be appropriate, approves, as a direct charge against the relevant Revenue Fund, an additional amount for that vote which covers the overspending; or

(b) the expenditure is unauthorised for another reason and Parliament or a provincial legislature, as may be appropriate, authorises the expenditure as a direct charge against the relevant Revenue Fund.

(2) If Parliament or a provincial legislature does not approve in terms of subsection (1) (a) an additional amount for the amount of any overspending, that amount becomes a charge against the funds allocated for the next or future financial years under the relevant vote.

### **Section 35 - Unfunded mandates**

Draft national legislation that assigns an additional function or power to, or imposes any other obligation on, a provincial government, must, in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications of that function, power or obligation to the province.

### **Section 36 (3) - words preceding para. (a)**

The relevant treasury may, in exceptional circumstances, approve or instruct in writing that a person other than the person mentioned in subsection (2) be the accounting officer for-

### **Section 36 (4)**

The relevant treasury may at any time withdraw in writing an approval or instruction in terms of subsection (3).

### **Section 38 (1) (g)**

on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;

### **Section 39 (2) (b) - words preceding sub-para. (i)**

report to the executive authority and the relevant treasury any impending-

### **Section 39 (2) (c)**

comply with any remedial measures imposed by the relevant treasury in terms of this Act to prevent overspending of the vote or a main division within the vote.

### **Section 40 (1) (c) (ii)**

the relevant treasury to enable that treasury to prepare consolidated financial statements in terms of section 8 or 19;

### **Section 40 (1) (d) - words preceding sub-para. (i)**

must submit within five months of the end of a financial year to the relevant treasury and, in the case of a department or trading entity, also to the executive authority responsible for that department or trading entity-

### **Section 40 (1) (f)**

is responsible for the submission by the department or constitutional institution of all reports, returns, notices and other information to Parliament, the relevant provincial legislature, an executive authority, the relevant treasury or the Auditor-General, as may be required by this Act.

### **Section 40 (4) (a)**

each year before the beginning of a financial year provide the relevant treasury in the prescribed format with a breakdown per month of the anticipated revenue and expenditure of that department for that financial year;

### **Section 40 (4) (c) - words preceding sub-para. (i)**

within 15 days of the end of each month submit to the relevant treasury and the executive authority responsible for that department-

### **Section 41 - Information to be submitted by accounting officers**

An accounting officer for a department, trading entity or constitutional institution must submit to the relevant treasury or the Auditor-General, such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require.

**Section 42 (3)**

The accounting officer for the transferring department must file a copy of the signed inventory with the relevant treasury and the Auditor-General within 14 days of the transfer.

**Section 43 (1)**

An accounting officer for a department may utilise a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote, unless the relevant treasury directs otherwise.

**Section 43 (3)**

An accounting officer must within seven days submit a report containing the prescribed particulars concerning the utilisation of a saving in terms of subsection (1), to the executive authority responsible for the department and to the relevant treasury.

**Section 43 (5)**

A utilisation of a saving in terms of subsection (1) is a direct charge against the relevant Revenue Fund provided that, in the case of a province, that province enacts such utilisation as a direct charge.

**Section 44 (2) (a)**

is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury may impose;

**Section 47 (4) (b)**

any public institution which functions outside the sphere of national or provincial government; and

**Section 48 (1)**

The Minister may by notice in the national *Government Gazette* classify public entities listed in Schedule 3 in accordance with the relevant definitions set out in section 1, as-

(a) national government business enterprises;

(b) provincial government business enterprises;

(c) national public entities; and

(d) provincial public entities.

**Section 49 (3)**

The relevant treasury, in exceptional circumstances, may approve or instruct that another functionary of a public entity must be the accounting authority for that public entity.

**Section 49 (4)**

The relevant treasury may at any time withdraw an approval or instruction in terms of subsection (3).

**Section 51 (1) (f)**

is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;

**Section 52 - words preceding para. (a)**

The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or government business enterprise, and to the relevant treasury, at least one month, or another period agreed with the National Treasury, before the start of its financial year-

**Section 54 (1)**

The accounting authority for a public entity must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or the Auditor-General may require.

**Section 54 (2) - words preceding para. (a)**

Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

**Section 55 (1) (c) (ii)**

if it is a business enterprise or other public entity under the ownership control of the national or a provincial government, to the relevant treasury; and

### **Section 55 (1) (d) - words preceding sub-para. (i)**

must submit within five months of the end of a financial year to the relevant treasury, to the executive authority responsible for that public entity and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General-

### **Section 55 (3)**

An accounting authority must submit the report and statements referred to in subsection (1) (d), for tabling in Parliament or the provincial legislature, to the relevant executive authority through the accounting officer of a department designated by the executive authority.

### **Section 55 (4)**

The relevant treasury may direct that, instead of a separate report, the audited financial statements of a Schedule 3 public entity which is not a government business enterprise must be incorporated in those of a department designated by that treasury.

### **Section 62 (3)**

The executive authority responsible for a public entity in respect of which the Auditor-General has issued a special report in terms of subsection (1) or (2), must promptly table the report in the National Assembly or the relevant provincial legislature, as may be appropriate.

### **Section 63 (2)**

The executive authority responsible for a public entity under the ownership control of the national or a provincial executive must exercise that executive's ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive.

### **Section 64 (3)**

Any decision of the executive authority to proceed with the implementation of the directive, and the reasons for the decision, must be in writing, and the accounting officer must promptly file a copy of this document with the National Treasury and the Auditor-General, and if a provincial department is involved, also with the relevant provincial treasury.

### **Section 65 (1) - words preceding para. (a)**

The executive authority responsible for a department or public entity must table in the National Assembly or a provincial legislature, as may be appropriate-

### **Section 66 (1) (c)**

in the case of loans by a province or a provincial government business enterprise under the ownership control of a provincial executive, is within the limits as set in terms of the Borrowing Powers of Provincial Governments Act, 1996 (Act 48 of 1996).

### **Section 66 (2)**

A government may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind a Revenue Fund to any future financial commitment:

(a) The National Revenue Fund: The Minister or, in the case of the issue of a guarantee, indemnity or security, the responsible Cabinet member acting with the concurrence of the Minister in terms of section 70.

(b) A Provincial Revenue Fund: The MEC for finance in the province, acting in accordance with the Borrowing Powers of Provincial Governments Act, 1996.

### **Section 66 (3) (d)**

A provincial government business enterprise listed in Schedule 3 and authorised by notice in the national *Government Gazette* by the Minister: The MEC for finance in the province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.

### **Section 66 (4)**

Constitutional institutions and provincial public entities not mentioned in subsection (3) (d) may not borrow money, nor issue a guarantee, indemnity or security, nor enter into any other transaction that binds or may bind the institution or entity to any future financial commitment.

### **Section 66 (5)**

Despite subsection (4), the Minister may in writing permit a public entity mentioned in subsection (3) (c) or (d) or a constitutional institution to borrow money for bridging purposes up to a prescribed limit, including a temporary bank overdraft, subject to such conditions as the Minister may impose.

### **Section 67 - No provincial foreign commitments**

A provincial government, including any provincial public entity, may not borrow money or issue a guarantee, indemnity or security or enter into any other transaction that binds itself to any future financial commitment, denominated in a foreign currency or concluded on a foreign financial market.

### **Section 69 - Regulations on borrowing by public entities**

The Minister may regulate by regulation in terms of section 76 the borrowing of money by or for or on behalf of public entities referred to in section 66 (3) (b), (c) and (d).

#### **Section 77 (a) (ii)**

the majority may not be persons in the employ of the department, except with the approval of the relevant treasury; and

#### **Section 77 (c)**

may be established for two or more departments or institutions if the relevant treasury considers it to be more economical.

#### **Section 80 (1)**

The Minister, by notice in the national *Government Gazette*, must determine-

(a) a uniform interest rate applicable to loans granted out of a Revenue Fund; and

(b) a uniform interest rate applicable to all other debts which must be paid into a Revenue Fund.

### **Section 82 - Financial misconduct by treasury officials**

An official of a treasury to whom a power or duty is assigned in terms of section 10 or 20 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

#### **Section 85 (1) (a) - words preceding sub-para. (i)**

the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General, including-

#### **Section 85 (1) (c)**

the circumstances in which the National Treasury or a provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;

#### **Section 85 (1) (e)**

the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and

### **Schedule 3 - Part C**

#### ***Provincial Public Entities***

#### **Eastern Cape:**

1. Centre for Investment and Marketing in the Eastern Cape
2. Eastern Cape Agricultural Bank
3. Eastern Cape Appropriate Technology Unit
4. Eastern Cape Arts Council
5. Eastern Cape Consumer Affairs Court
6. Eastern Cape Development Corporation
7. Eastern Cape Development Tribunal
8. Eastern Cape Gambling and Betting Board
9. Eastern Cape Liquor Board
10. Eastern Cape Local Road Transport Board
11. Eastern Cape Museums
12. Eastern Cape Provincial Housing Board
13. Eastern Cape Provincially Aided Libraries
14. Eastern Cape Regional Authorities
15. Eastern Cape Socio-Economic Consultative Council
16. Eastern Cape Tender Board

17. Eastern Cape Tourism Board
18. Eastern Cape Township Board

**Free State:**

1. Free State Mangaung Nursing College
2. Free State Rural Foundation
3. Free State Rural Strategy Unit
4. Free State Liquor Board
5. Free State Gambling and Gaming Board
6. Free State Tender Board
7. Free State Tourism Board
8. Free State Youth Commission

**Gauteng:**

1. Gauteng Economic Development Agency
2. Gauteng Gambling Board
3. Gauteng Tourism Authority
4. Gauteng Consumer Affairs Court
5. Gauteng Development Tribunal
6. Gauteng Education and Training Board
7. Gauteng Municipal Demarcation Board
8. Gauteng Provincial Housing Board
9. Gauteng Services Appeal Board
10. Gauteng Townships Board

**KwaZulu-Natal:**

1. KwaZulu-Natal Appeals Tribunal
2. KwaZulu-Natal Development & Services Board
3. KwaZulu-Natal Development Tribunal
4. KwaZulu-Natal Gambling Board
5. KwaZulu-Natal House of Traditional Leaders
6. KwaZulu-Natal Monuments Council
7. Natal Sharks Board
8. KwaZulu-Natal Private Townships Board
9. KwaZulu-Natal Town and Regional Planning Commission
10. KwaZulu-Natal Townships Board
11. KwaZulu-Natal Provincial Peace Committee
12. KwaZulu-Natal Tender Board
13. KwaZulu-Natal Tourism Authority
14. KwaZulu-Natal Liquor Board

15. KwaZulu-Natal Conservation Services
16. KwaZulu-Natal Local Roads Transportation Board
17. KwaZulu-Natal Marketing Initiative
18. KwaZulu-Natal Economic Council
19. KwaZulu-Natal Taxi Task Team
20. KwaZulu-Natal International Airport Development Initiative
21. S.A. Life Saving
22. Natal Trust Fund
23. Natal Arts Trust

**Mpumalanga:**

1. Mpumalanga Gambling Board
2. Mpumalanga Housing Board
3. Mpumalanga Parks Board
4. Mpumalanga Tender Board

**Northern Cape:**

1. Northern Cape Economic Development Unit
2. Northern Cape Gambling Board
3. Northern Cape Housing Board
4. Northern Cape Liquor Board
5. Northern Cape Local Transportation Board
6. Northern Cape Provincial Tender Board
7. Northern Cape Tourism Authority
8. Northern Cape Youth Commission

**Northern Province:**

1. Northern Province Agricultural and Rural Development Corporation
2. Northern Province Appeal Tribunals
3. Northern Province Development Tribunals
4. Northern Province Panel of Mediators
5. Northern Province Planning Commission
6. Northern Province Provincial Tender Board
7. Northern Province Tourism Board
8. Northern Province Gaming Board
9. Northern Province Liquor Board
10. Northern Province Local Business Centres
11. Northern Province Housing Board
12. Northern Province Investment Initiative
13. Gateway International Airport

**North West:**

1. NW Agricultural Services Corporation
2. NW Arts Council
3. NW Communication Service
4. NW Mmabana Cultural Foundation
5. NW Ombudsman
6. NW Gambling Board
7. NW Tender Board
8. NW Parks and Tourism Board
9. NW Housing Corporation

**Western Cape:**

1. WC Investment and Trade Promotion Agency
2. WC Provincial Tender Board
3. WC Tourism Board
4. WC Gambling and Racing Board
5. WC Housing Development Board
6. WC Liquor Board
7. WC Provincial Development Council

Any subsidiary or entity under the ownership control of the above public entities

**Schedule 3 - Part D**

*Provincial Government Business Enterprises*

**Entity:**

1. Algoa Bus Company
2. Mayibuye Transport Corporation
3. Free State Agri-Eco (Pty) Ltd
4. Free State Development Corporation
5. KwaZulu-Natal Finance & Investment Corporation
6. KwaZulu-Natal Mjindi Farming (Pty) Ltd
7. Mpumalanga Development Corporation
8. Mpumalanga Finance Corporation
9. NW Development Corporation
10. Natal Trust Farms (Pty) Ltd
11. Northern Province Development Corporation

Any subsidiary or entity under the ownership control of the above public entities

**Schedule 4 - heading**

Schedule 4  
EXCLUSIONS FROM REVENUE FUNDS

(In terms of section 13 (1) or 22 (1))



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Gazette No: 21082  
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**GOVERNMENT NOTICE**

**DEPARTMENT OF STATE EXPENDITURE**

No. R. 380 8 April 2000

**PUBLIC FINANCE MANAGEMENT ACT, 1999: DRAFT TREASURY REGULATIONS**

The draft Treasury Regulations set out in the Schedule are hereby published for public comment in terms of section 78 of the Public Finance Management Act, 1999.

Interested persons who wish to comment on the draft Treasury Regulations may submit their representations in writing before 2nd May 2000 to:

The Acting Director-General

Department of State Expenditure

Private Bag X 845

PRETORIA

0001

All representations must be marked for the attention of Mr Jayce Nair and may either be posted to the above address or transmitted by fax to 012 - 315 5608 or by e-mail to [NairJM@dse.pwv.gov.za](mailto:NairJM@dse.pwv.gov.za)

Treasury Regulations

Issued in terms of the

Public Finance Management Act, 1999

National Treasury

April 2000

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## PART 1

### Definitions

1

### General definitions

#### 1.1 General definitions

In these Treasury Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning, unless the context indicates otherwise:

"Act" means the Public Finance Management Act (Act No. I of 1999), as amended by Act No. 29 of 1999;

"debt" means amounts owing to the state;

"employee" means a person contemplated in section I of the Public Service Act, 1994, read in conjunction with section 1 of the Public Service Amendment Act (Act No. 13 of 1996);

"institution" means a department, trading entity, constitutional institution, Parliament or a provincial legislature - read in context with the relevant chapter;

## PART 2

### Planning and budgeting

2

#### Strategic planning

##### 2.1 Date of implementation

2.1.1 The first date for submission of strategic plans is 30 June 2001. Quarterly reports on performance take effect from 1 April 2002.

##### 2.2 Strategic plans

2.2.1 The accounting officer must prepare a strategic plan for the forthcoming Medium Term Expenditure Framework (MTEF) period, for approval by the relevant executive authority.

2.2.2 The approved strategic plan must be forwarded to the relevant treasury no later than 30 June each year.

##### 2.2.3 The strategic plan must:

- (a) cover a period of three years and be consistent with the institution's input to the MTEF;
- (b) include the programme objectives and outcomes identified by the executive authority, as well as the Service Delivery Improvement Plan;
- (c) include the multi-year projections of revenue and expenditure for the forthcoming annual budget;

(d) include the key performance measures and key indicators of the service delivery plans for assessing the institution's performance in delivering the desired outcomes and objectives;

(e) be updated annually on a rolling basis;

(f) include the requirements of Chapter 1, Part III B of the Public Service Regulations, 1999; and

(g) form the basis for the annual reports of accounting officers in terms of section 40(1)(d) of the Act.

2.2.4 The relevant treasury may issue guidelines on the compilation of strategic plans.

## 2.3 Evaluation of performance

2.3.1 The accounting officer must establish procedures for quarterly reporting by management on the institution's programme performance, to facilitate effective monitoring and evaluation.

2.3.2 The accounting officer must issue quarterly reports to the executive authority, evaluating the institution's performance.

2.3.3 The quarterly reports to the executive authority must form the basis for the accounting officer's report of the institution's performance, for inclusion in the annual report of activities as required by section 40(1)(d)(i) of the Act.

## 3

### Budgeting and related matters

#### 3.1 Annual budget circular

3.1.1 The accounting officer must comply with any annual budget circulars issued by the relevant treasury. Budget circulars issued by provincial treasuries must be consistent with any budget circular issued by the national Treasury to provincial treasuries.

#### 3.2 Formats for Estimates of Expenditure and Departmental Revenue

3.2.1 The Estimates of Expenditure and Departmental Revenue presented to Parliament or the relevant provincial legislature must conform to the formats prescribed by the national Treasury.

### 3.3 Virement

#### 3.3.1 For purposes of section 43(1) of the Act:

- (a) personnel expenditure and transfer payments (excluding division of revenue transfers) may not be increased without prior approval of the relevant treasury; and
- (b) allocations earmarked by the relevant treasury may not be used for other purposes except with the relevant treasury's approval.

### 3.4 Rollovers

3.4.1 Funds appropriated but not spent in a particular financial year may be rolled over to a subsequent year subject to the following conditions or limitations:

- (a) Capital expenditure: Unspent funds on capital expenditure may only be rolled over to finalise projects still in progress or for other capital purposes.
- (b) Transfer payments: Savings on transfer payments may not be rolled over for purposes other than originally voted for.
- (c) Current expenditure: Institutions may roll over a maximum of five per cent of their voted funds in the main estimate of expenditure for that specific year, excluding capital expenditure and transfer payments.

3.4.2 Requests for rollovers must be submitted to the relevant treasury on or before the last working day of May each year, in the format set out in Annexure 1.

3.4.3 The relevant treasury may deny all or part of a request for a rollover if this request does not conform to prescribed arrangements or if other circumstances warrant such a denial.

### 3.5 Transfer of functions

3.5.1 Where a function is to be transferred between departments during a financial year, the relevant treasury must be consulted in advance, to facilitate any request for the resulting transfer of funds voted for that function in terms of section 33 of the Act.

3.5.2 Should the Minister of Public Service and Administration make a

determination regarding the transfer of a function in terms of section 3(b) of the Public Service Act, 1999, or a Premier of a province in terms of section 3A(b) of this Act, that determination must accompany a request for the transfer of funds as per paragraph 3.5.1. Should the Minister or Premier approve a function transfer after the finalisation of the adjustments estimates, it must be dealt with on a recoverable basis.

3.5.3 Before any transfer of a function to another sphere of government, the transferring accounting officer must first seek the approval of the relevant treasury on any funding arrangements.

### 3.6 Additional funds through an adjustments budget

3.6.1 For purposes of an adjustments budget, the following will not be considered unforeseeable and unavoidable expenditure:

- (a) expenditure that, although known when finalising the estimates of expenditure, could not be accommodated within allocations;
- (b) tariff adjustments and price increases, and
- (c) extensions of existing services and the creation of new services that are not unforeseeable and unavoidable.

3.6.2 The institution requesting additional funds through an adjustments budget must submit a memorandum to the relevant treasury, the Cabinet/EXCO Secretariat and any treasury subcommittee of the Cabinet/EXCO on a date prescribed by the relevant treasury.

## PART 3

### Internal management arrangements

4

#### Corporate management

##### 4.1 Chief financial officer

4.1.1 The accounting officer must appoint an official as chief financial officer (CFO) no later than 1 April 2001, to serve in the management team of the institution, unless directed otherwise by the relevant treasury.

4.1.2 In exercising his or her responsibilities, the CFO is directly accountable to the accounting officer.

## 4.2 Audit committees

4.2.1 The relevant treasury must determine whether institutions have shared or non-shared audit committees.

4.2.2 In the case of a non-shared audit committee, the accounting officer must appoint audit committee members after consultation with the relevant executive authority

4.2.3 In the case of a shared audit committee, the head of the relevant treasury must appoint audit committee members after consultation with the relevant executive authority.

4.2.4 In addition to section 77(a)(iii) of the Act, chairpersons of the audit committee may not be political office bearers.

4.2.5 Audit committees must be constituted so as to ensure its independence.

4.2.6 Members of an audit committee who have been appointed from outside the public service pursuant to section 77(a)(i) of the Act, must be appointed on contract and remunerated in accordance with paragraphs 21.2.2 and 21.2.3 of these Treasury Regulations.

4.2.7 The termination of the services of a person serving on the audit committee must be done with the concurrence of the relevant executive authority.

4.2.8 The accounting officer or his or her designate must represent the institution on the audit committee.

4.2.9 The audit committee must, together with the head of internal audit, establish an audit committee charter to guide the committee's approach, as well as its modus operandi, which should spell out the rules that govern the audit relationship. This charter must be approved by the accounting officer or, in the case of a shared audit committee, by all the accounting officers involved.

4.2.10 The audit committee and senior management must facilitate a risk assessment to determine the material risks to which the institution may be exposed and to evaluate management strategy for managing those risks. The strategy must be used to direct audit effort and priority, and to determine the management skills required to manage these risks.

4.2.11 The audit committee must report and make recommendations to the

accounting officer, but the accounting officer retains responsibility for implementing such recommendations.

4.2.12 Should a report from internal audit (or any other source) to the audit committee implicate the accounting officer in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority.

4.2.13 The audit committee may communicate any concerns it deems necessary to the executive authority and/or the Auditor-General.

### 4.3 Internal audit

4.3.1 The relevant treasury must determine whether institutions have shared or non-shared internal audit units.

4.3.2 In the case of non-shared internal audit units, it is the responsibility of the accounting officer to establish these units.

4.3.3 In the case of shared internal audit units, these must be established by the relevant treasury after consultation with the accounting officers of the relevant institutions.

4.3.4 The internal audit unit may be contracted to an external institution with specialist audit expertise, provided that its selection is in accordance with the government's competitive tendering procedures.

4.3.5 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.

4.3.6 The internal audit unit must prepare in consultation with, and for approval by, the audit committee:

- (a) a rolling three-year strategic internal audit plan based on its assessment of key areas of risk for the institution, having regard to its current operations, those proposed in its strategic plan and its risk management strategy;
- (b) an annual internal audit plan for the year in prospect;
- (c) plans indicating the proposed scope of each audit in the annual internal audit plan;
- (d) a modus operandi, with management inputs, to guide the audit relationship; and

- (e) a quarterly report to the audit committee detailing its performance against the plan, to allow effective monitoring and possible intervention.

4.3.7 The internal audit unit must be independent, with no limitation on accessing information.

## 5

### Financial misconduct

#### 5.1 Investigation of alleged financial misconduct

5.1.1 If a treasury believes that a person may have committed financial misconduct against an institution, it may instruct the institution to investigate whether this has, in fact, occurred.

5.1.2 Paragraph 5.1.1 does not affect:

- (a) any duty on any executive authority or accounting officer in terms of the Act or any other law to investigate financial misconduct; and
- (b) the right of a treasury or the Auditor-General to investigate financial misconduct.

5.1.3 A treasury may:

- (a) direct that a person other than an employee of the institution conducts the investigation; or
- (b) issue any reasonable requirement regarding the way in which the investigation should be performed.

5.1.4 The accounting officer must:

- (a) conduct the investigation within the period specified by the relevant treasury or, if no period is specified, within a reasonable period;
- (b) report to the relevant treasury on the outcome of the investigation;
- (c) advise the relevant treasury of any steps, including disciplinary action, the laying of criminal charges or the institution of civil proceedings, taken as a result of the investigation; and

- (d) advise the relevant treasury of any changes to its systems of financial and risk management or any other matter dealt with in the Act, as a result of the investigation.

## 5.2 Disciplinary proceedings

5.2.1 The accounting officer must advise the relevant treasury and the Auditor-General of any disciplinary proceedings instituted against an employee for financial misconduct, stating:

- (a) the name and rank of the person against whom proceedings are instituted;
- (b) the disciplinary charges, indicating the financial misconduct the person is alleged to have committed;
- (c) the period during which the alleged financial misconduct was committed; and
- (d) the proposed date of any disciplinary hearing.

5.2.2 A failure by the institution to report in terms of paragraph 5.2.1 does not constitute a procedural irregularity in any disciplinary proceedings for financial misconduct.

5.2.3 If a treasury believes that an employee of an institution may have committed financial misconduct, it may instruct the institution to institute disciplinary proceedings against the employee.

5.2.4 The accounting officer must advise the relevant treasury and the Auditor-General of the outcome of any such disciplinary proceedings, stating:

- (a) the finding of the disciplinary hearing;
- (b) any sanction imposed on the employee; and
- (c) any further action to be taken against the employee, including criminal charges or civil proceedings.

5.2.5 If an accounting officer obtains information that a former employee may have committed financial misconduct, it must report this to the relevant treasury and the Auditor-General.

The report must contain the information set out in paragraph 5.2.1, read with the changes required by the context.

### 5.3 Criminal proceedings

5.3.1 The institution must advise the relevant treasury and the Auditor-General of any charges it has laid against any person for criminal financial misconduct.

5.3.2 The relevant treasury may direct an institution to lay charges of criminal financial misconduct against any person.

5.3.3 The institution must advise the relevant treasury and the Auditor-General of the outcome of any criminal proceedings instituted against any person for financial misconduct.

### 5.4 Contractors

5.4.1 If a treasury has reason to believe that a person with whom an institution has concluded or is about to conclude a contract, has committed financial misconduct, the treasury may request the institution to terminate, or not conclude, a contract with that person or to take any other action against that person.

5.4.2 The institution must comply with such a request unless it supplies written reasons to the treasury for not doing so.

### 5.5 General

5.5.1 Any report, instruction or advice in terms of these Treasury Regulations must be in writing.

## PART 4

### Revenue and expenditure management

#### 6

### Revenue management

#### 6.1 Application of these Treasury Regulations

6.1.1 The Treasury Regulations in this chapter apply to the identification, collection, recording and safeguarding of all revenue for which the institution is responsible.

## 6.2 Responsibility for revenue management

6.2.1 The accounting officer must manage revenue efficiently and effectively by developing and implementing appropriate processes that provide for the identification, collection, safeguarding, recording and reconciliation of information about revenue.

6.2.2 Revenue management processes may include arrangements for accepting credit card payments, a facility for electronic funds transfer and any other facility for receipting amounts.

## 6.3 Services rendered by the state

6.3.1 The accounting officer must annually review all fees, charges or the rates, scales or tariffs of fees and charges that are not, or cannot, be fixed by any law and that relate to revenue accruing to the revenue fund. The relevant treasury must approve the proposed tariff structure.

6.3.2 Information on the tariff policy must be disclosed in the annual report.

# 7

## Management of debtors

### 7.1 Application of these Treasury Regulations

7.1.1 The Treasury Regulations in this chapter apply to all debts accruing to an institution and include any amount owing to or receivable by the institution, such as accounts for charges for goods or services, fees or fines outstanding, wrongly granted remuneration and overpayments recoverable by the institution.

### 7.2 Responsibility for management of debtors

7.2.1 The accounting officer must take effective and appropriate steps to collect all money due to the institution including, as necessary:

- (a) maintenance of proper accounts and records for all debtors, including amounts received in part payment; and
- (b) referral of a matter to the State Attorney to consider a legal demand and possible legal proceedings in a court of law.

### 7.3 Recovery of debts by instalments

7.3.1 Unless otherwise prescribed, debts owing to the state (except cases where the conditions of payment are determined by law or agreement) may, at the discretion of the accounting officer, be recovered in instalments.

#### 7.4 Writing off of debts owing to the state

7.4.1 Any debt written off by an accounting officer must:

- (a) be disclosed as a note in the annual financial statements;
- (b) only be written off after all reasonable steps have been taken to recover the debt, failing which the accounting officer will be held personally liable.

7.4.2 Wrongly granted remuneration may only be written off with the approval of the relevant treasury.

#### 7.5 Interest payable on debts to the state

7.5.1 Interest must be charged on all debts to the state at the interest rate provided for in terms of section 80 of the Act.

## 8

### Expenditure management

#### 8.1 Responsibility of the accounting officer

8.1.1 The accounting officer must ensure that internal procedures and internal control measures are in place for payment approval and processing, including payments related to expenditure unique or peculiar to the institution.

#### 8.2 Approval of expenditure

8.2.1 An official may not spend or commit to spending public money except with the express approval (either in writing or by duly authorised electronic means) of a properly delegated or authorised officer.

8.2.2 Before approving expenditure or incurring a commitment to spend, the delegated or authorised officer must ensure that any limitations or conditions attached to the delegation or authorisation are complied with.

8.2.3 Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of the invoice.

### 8.3 Vesting of expenditure on a particular vote

8.3.1 Should a dispute occur over the vesting of expenditure on a particular vote, the relevant treasury has to determine against which vote or subdivision the expenditure should be charged.

### 8.4 Cancellation and variation of contracts

8.4.1 No contract (excluding personnel contracts) can be cancelled or changed to the detriment of the state without prior approval of the relevant treasury.

## 9

### Control of personnel costs

#### 9.1 Managing personnel costs

9.1.1 Personnel cost management means the systems, procedures and processes an accounting officer must put in place in terms of sections 38(1)(a)(i) and 38(b) of the Act to ensure the effective, efficient, economical and transparent management of the human resources of the institution. It includes provision for personnel appointments and resignations, remuneration and service conditions, payments to personnel, and the recording of the related transactions.

9.1.2 Personnel cost management processes must be in accordance with powers delegated by or authorisations issued by the accounting officer, and he or she must ensure adequate separation of duties and supervision. Activities relating to the authorisation of appointments, the authorisation of payments and the recording of those payments may not be performed by the same person.

9.1.3 The accounting officer must ensure that the personnel cost of all appointees, as well as promotion and salary increases can be met within the budgetary allocation of his or her institution.

9.1.4 When an employee resigns, any amounts owed to and goods of the institution must be recovered immediately.

#### 9.1.5 Paying personnel costs includes:

- (a) ensuring that the personnel cost has been duly authorised by a duly delegated or authorised person;
- (b) ensuring that any deductions from remuneration are authorised and correctly calculated;
- (c) making the payment by secure means when it is due according to the cash management process.

9.1.6 Unless otherwise determined by the national Treasury, personnel are divided into the following groups for the payment of salaries:

- (a) Group A: Persons who must be paid on the 15th day of the month, or if it is not a working day, on the last working day preceding the 15th, and comprises:
  - (i) persons appointed permanently on the fixed establishment;  
and
  - (ii) persons appointed on contract.
- (b) Group B: This group represents personnel paid on the last working day of the month and includes temporary and part-time staff, and persons appointed on probation.

9.1.7 With the exception of the Group A pay group, as per paragraph 9.1.6, salaries must not be paid in advance and any advances made in error must be recovered as soon as possible.

9.1.8 Recording personnel costs includes:

- (a) the identification and recording of all related transactions;
- (b) the monthly reconciliation of salary and personnel costs;
- (c) maintenance of an adequate audit trail;
- (d) obtaining information about personnel costs to allow the timely provision of relevant and reliable information to the institution's managers and for external reporting; and
- (e) safeguarding personal data against unauthorised use.

## Transfer payment management

### 10.1 Transfer mechanism

10.1.1 An accounting officer must classify all transfers as follows:

- (a) transfers to another sphere of government;
- (b) transfers to an institution within that sphere of government under the control of that government;
- (c) transfers to any other non-government institution;
- (d) transfers to households;
- (e) any other transfers not covered above.

### 10.2 Transfers to another sphere of government

10.2.1 An accounting officer must ensure that any transfers to another sphere of government comply with the annual Division of Revenue Act for that financial year. Such transfers must include any grants-in-kind to a sphere of government totaling more than R20 million.

10.2.2 The accounting officer whose institution transfers or receives any grant from another sphere of government, and where such a grant is in terms of the annual Division of Revenue Act for that financial year, must comply with the reporting requirements of that Act.

### 10.3 Transfers to a listed public entity or any other institution

10.3.1 The accounting officer of an institution transferring funds to a public entity listed in terms of this Act, or any other institution that is subject to an audit by the Auditor General, may transfer funds to that institution after receiving its most recent annual report, provided that this report includes an audit opinion on the financial statements and a statement on the system of financial management and internal controls. The accounting officer may only withhold the transfer of funds if informed by the Auditor-General that the public entity or institution does not comply with basic financial management and internal control systems.

### 10.4 Transfers to institutions not subject to audit by the Auditor-General

10.4.1 The accounting officer of any institution transferring funds not

covered by the annual Division of Revenue Act, and where the transfer is not to a household, constitutional institution, public entity or an institution audited by the Office of the Auditor-General, must ensure that the institution receiving the grant submits a certificate of compliance with the conditions of section 38(1)(j) of the Act, including the receipt of the most recent audited statement and any annual report, before any funds are transferred. An accounting officer transferring funds to a school, hospital or clinic may delay implementation of this clause, but to no later than 31 January 2001.

10.4.2 The accounting officer transferring funds not covered by the annual Division of Revenue Act and which are not transfers to a household, must submit a report in a prescribed format to the relevant treasury 15 days after every quarter, outlining per institution all the funds transferred up to the end of that quarter. The annual report must include information per institution, as well as a report on compliance with section 38(1)(j) of the Act.

## 10.5 Managing transfer payments

10.5.1 Processes for transfer payment management must ensure compliance with all relevant legislation and government policies, and provide for the identification, approval, payment and recording of transfer payment expenses.

10.5.2 Approving transfer payment expenses includes:

- (a) incurring a transfer payment expense for authorised purposes only; and
- (b) ensuring that:
  - (i) the beneficiary complied with the conditions, if any, attached to the previous year's assistance;
  - (ii) continued assistance and financial aid are still necessary;
  - (iii) the agreed objectives were attained; and
  - (iv) the transfer payment expense provides reasonable value for money in procuring programmes related to the functional responsibility of the institution.

10.5.3 A transfer payment must not be made unless and until:

- (a) proper assurance has been obtained that the payment is valid and the amount is correct;

(b) the institution has made adequate cash management arrangements.

11

Unauthorised, irregular, fruitless and wasteful expenditure

### 11.1 General

11.1.1 Accounting officers must exercise all reasonable care by implementing effective, efficient and transparent processes of financial and risk management to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure.

11.1.2 When the accounting officer or an official of an institution discovers instances of unauthorised or irregular expenditure, these must be reported immediately in writing to the relevant treasury. Where irregular expenditure was incurred in contravention of prescribed tender procedures, the relevant tender board must be notified.

11.1.3 Nothing in these Treasury Regulations prevents the accounting officer from acting against persons responsible for unauthorised, irregular, fruitless and wasteful expenditure.

11.1.4 The accounting officer must submit all documents and other information concerning unauthorised or irregular expenditure to the relevant treasury, and in the case of irregular expenditure incurred in contravention of prescribed tender procedures, to the relevant treasury and the relevant tender board.

11.1.5 In the case of unauthorised expenditure, the following steps must be taken:

(a) The relevant treasury must conduct a thorough investigation into the matter; it may ask the Office of the Auditor-General for assistance.

(b) After the investigation, the relevant treasury may initiate disciplinary action against the accounting officer or any other official in terms of section 84 of the Act, or against other officials in terms of the Public Service Act, 1994. Wherever possible, the relevant treasury must initiate steps to recover any amounts it deems necessary, in terms of the Treasury Regulations.

(c) The relevant treasury must submit a report to Parliament or the provincial legislature, which includes all the details of the

unauthorised expenditure and steps taken against those responsible.

- (d) Where Parliament or the provincial legislature does not authorise the unauthorised expenditure, the accounting officer must recover the amount in terms of these Treasury Regulations. If the accounting officer is unwilling to recover the amount, the relevant treasury must recover the amount from the accounting officer.

11.1.6 In the case of irregular expenditure, the relevant treasury or tender board may, after thorough investigation, condone the non-compliance with these Treasury Regulations or Tender Board Regulations, respectively. If such condonation is not granted, the following action must be taken:

- (a) any losses must be determined and recovered in terms of these Treasury Regulations; and
- (b) disciplinary steps must be taken in terms of section 84 of the Act where the person responsible for the irregular expenditure is the accounting officer of an institution; or
- (c) disciplinary steps must be taken in terms of the Public Service Act, 1994.

11.1.7 Fruitless and wasteful expenditure must be recovered in accordance with these Treasury Regulations.

11.1.8 All cases of unauthorised, irregular, fruitless and wasteful expenditure must be disallowed immediately. Any amount that cannot be recovered must be accepted as a charge against the expenditure item "Thefts and losses" (established under the programme where the unauthorised expenditure occurred) only after the prescribed procedures have been followed.

11.1.9 The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.

11.1.10 The accounting officer must implement any corrective steps recommended by the relevant treasury, tender board and/or the Standing Committee on Public Accounts.

## PART 5

### Assets and liabilities management

## Asset management

### 12.1 Responsibility for asset management

12.1.1 The accounting officer must take full responsibility and ensure that control systems over all current and non-current assets are in accordance with best practice and that:

- (a) preventative mechanisms are in place to eliminate theft, losses, wastage and misuse; and
- (b) stock levels are at an optimum and economical level.

12.1.2 The accounting officer must ensure that processes (whether manual or in electronic form) and procedures are in place for the effective, efficient, economical and transparent use of the institution's assets.

### 12.2 Immovable asset management

12.2.1 Any sale of immovable state property must be at market value (based on a willing buyer or willing seller in an orderly market situation) or, if market value cannot be obtained, a valuation based on the average of two valuations by independent valuers.

12.2.2 The letting of immovable state property must be at market-related tariffs, unless determined otherwise by the relevant treasury. No. letting of state property shall be rendered free of charge without prior approval of the relevant treasury.

12.2.3 All fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property must be reviewed annually by the accounting officer to ensure sound financial planning and management.

### 12.3 Assets accruing to the state by operation of any law

12.3.1 Where any money, property or right accrues to an institution by operation of law (bona vacantia), the responsible executive authority may exercise all powers, authority and prerogatives and fulfil any obligation on behalf of the state.

## 13.1 General

13.1.1 No national or provincial institution may borrow money.

13.1.2 No provincial institution may issue a guarantee, security or indemnity that may bind the provincial revenue fund, except within the limits set by the Borrowing Powers of Provincial Government Act, 1996 and with the prior written approval of the relevant MEC responsible for Finance.

13.1.3 No constitutional institution may borrow money or issue a guarantee, security or indemnity.

13.1.4 No national institution may issue a guarantee, indemnity or security without the prior approval of the executive authority, acting with the concurrence of the Minister of Finance.

13.1.5 Except for the national Treasury and a national accounting officer who has a written approval from the Minister, no other accounting officer may enter the state into a liability in a foreign currency or concluded on a foreign financial market.

13.1.6 The accounting officer of an institution must ensure that no official in that institution borrows money on behalf of that institution, or issues an unauthorised guarantee, security or indemnity. The accounting officer must ensure that misconduct and criminal proceedings are instituted against any official responsible. Should the accounting officer be involved in borrowing money for the department, the executive authority must proceed with misconduct and criminal proceedings against the accounting officer.

13.1.7 Institutions allowed to open bank accounts in terms of the framework in Chapter 15 of these Treasury Regulations (issued in terms of section 7 of the Act) may not borrow for bridging purposes and must not run any overdrafts on their banking accounts.

13.1.8 The accounting officer must report on all contingent liabilities of his or her institution in its annual report.

14

## Management of Losses and claims

### 14.1 General

14.1.1 Subject to the provisions of these Treasury Regulations, or any

other legislation or agreement, the state will bear its own damages and accident risks and be responsible for all claims and losses of state property where these arise from state activities by a person who is or was employed by an institution to which these Treasury Regulations apply.

14.1.2 Notwithstanding the above paragraph, the accounting officer may (if deemed economical and based on a risk assessment) insure movable assets, but the insurance premium cost may not exceed one million rands per annum on that vote, unless otherwise approved by the relevant treasury.

14.2 Claims against the state and deficiencies, losses or damages caused through acts or omissions

14.2.1 An institution may accept liability for any loss, damage or claim arising from an act or omission of an employee provided:

- (a) the act or omission was the cause of the loss, damage or reason for the claim;
- (b) the act or omission did not involve the use of alcohol or drugs;
- (c) the employee acted in the course of his or her employment;
- (d) the employee did not fail to comply with or ignore standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim; and
- (e) in the case of a loss, damage or claim arising from the use of a state vehicle, the employee:
  - (i) used the vehicle with authorisation for official purposes;
  - (ii) is in possession of a valid driver's licence or other appropriate licence;
  - (iii) used the vehicle in the interest of the state;
  - (iv) did not allow unauthorised persons to handle the vehicle; and
  - (v) did not deviate materially from the official journey or route without prior authorisation.

14.2.2 The accounting officer of the institution must consult the State Attorney on questions of law in the implementation of paragraph 14.2.1.

14.2.3 Any amount paid by an institution for losses, damages or claims arising from the act or omission of an employee must be recovered from the employee concerned unless the institution accepts liability in terms of paragraph 14.2.1.

#### 14.3 Claims by the state against other persons

14.3.1 If the state suffers a loss or damage, the accounting officer must refer the matter to the State Attorney for legal action.

14.3.2 The State Attorney may only obligate the funds of an institution with the prior written approval of the accounting officer.

#### 14.4 Claims by employees against the state

14.4.1 If an employee sustains a loss or damage in the execution of official duties and is not compensated, the accounting officer may make good the loss or damage provided that the state is liable in law for the loss or damage.

#### 14.5 Losses or damages through criminal acts or omissions

14.5.1 When it appears that the state has suffered losses or damages through criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. Where the person concerned is or was in state employment, the accounting officer must recover the value of the loss or damage from the person responsible.

#### 14.6 Losses and damages through vis majorand other unavoidable causes

14.6.1 The accounting officer may write off losses and damages that result from unavoidable causes.

#### 14.7 Recovery of losses

14.7.2 If an employee caused the institution a loss or damage for which that employee is liable in terms of clause 14.2, the accounting officer must determine the amount and, in writing, order that employee to pay the amount within 30 days or in reasonable instalments.

## PART 6

### Frameworks

## Banking, cash management and investment

This chapter excludes the management of trust money.

### 15.1 Control of the national and provincial revenue funds

15.1.1 Each treasury is responsible for the effective and efficient management of its revenue fund.

15.1.2 Each treasury must ensure that the revenue fund at all times has sufficient money for appropriated expenditure and direct charges to meet the progressive cash flow requirements of the institutions that draw money from the fund, as required.

15.1.3 Each revenue fund consists, at any point in time, of all cash balances of the fund, derived from the relevant treasury's operating, investing and financing activities.

### 15.2 Bank account configuration

15.2.1 The bank account configuration for the National Revenue Fund comprises an Exchequer bank account, a Paymaster-General bank account with the South African Reserve Bank, the four tax and loan accounts with commercial banks, and any other bank account opened to facilitate the management of the National Revenue Fund. The national Treasury may open additional accounts on such terms and conditions as it may determine.

15.2.2 Each provincial revenue fund must have a bank account configuration that consists of at least an Exchequer bank account and a Paymaster-General bank account, opened with a commercial bank.

15.2.3 If the accounting for an institution necessitates a separate bank account, the relevant treasury may approve one subaccount within the Paymaster-General account of the relevant revenue fund. Such subaccounts remain an integral part of the bank account configuration of the relevant revenue fund.

### 15.3 Deposits into the revenue funds

15.3.1 In terms of sections 11(3) and 21(2) of the Act, money is paid into a revenue fund by depositing it into a bank account in accordance with the configuration requirements prescribed above.

15.3.2 Money deposited into the Paymaster-General account must

immediately be available to the relevant treasury for funding expenditure or investment according to its central cash management responsibilities.

#### 15.4 Responsibilities of the South African Revenue Service

15.4.1 The South African Revenue Service must supply the relevant treasury with an annual revenue projection no later than the 10th working day of March preceding the start of the financial year. It must also submit an updated monthly revenue projection for the remainder of the year, no later than the 15th working day of each month.

15.4.2 For purposes of section 12 of the Act, the South African Revenue Service must implement measures to ensure that all taxes, levies, duties, fees and other money due to and collected by it for a revenue fund are accounted for and deposited daily into the relevant fund. The relevant treasury must be informed daily of such revenue and its standard revenue classifications.

#### 15.5 Responsibilities of departments and constitutional institutions

15.5.1 For purposes of sections 13 and 22 of the Act, all revenue in excess of R500 received by a department or constitutional institution must be paid daily into the Paymaster-General account of the relevant revenue fund. This revenue must be accounted for in the ledger in the prescribed control accounts and paid over to the relevant treasury by the last working day of the month. The treasury must issue a receipt, deposit the revenue into the Exchequer bank account of the revenue fund and account for it in accordance with the standard revenue classifications.

15.5.2 Money collected by a department or constitutional institution, which is not classified as revenue, must be paid into the institution's Paymaster-General account and accounted for in its ledger. This includes, for example, money received for agency services provided to another department or constitutional institution.

#### 15.6 Withdrawals from and investments in revenue funds

15.6.1 Provincial treasuries may, in accordance with section 24 of the Act, temporarily invest surplus money in the provincial revenue fund in an account in South Africa, approved as part of the bank account configuration of the fund.

#### 15.7 Requisitioning of funds by departments

15.7.1 When requesting the transfer of appropriated funds, accounting officers of national departments must submit such requisitions to the

national Treasury in accordance with approved cash flow estimates at least four full working days before the end of the month preceding the month in which the funds are required. Provincial treasuries may determine their own time scales in this regard.

15.7.2 Provincial treasuries will receive their appropriated funds from the National Revenue Fund in accordance with the cash flow schedule determined in terms of the annual Division of Revenue Act.

## 15.8 Surrender of surplus funds

15.8.1 At the end of each financial year, and after the books of account of a department or constitutional institution have been closed, the accounting officer must surrender to the relevant treasury any unexpended money, for redepositing into the Exchequer bank account of the relevant revenue fund.

15.8.2 Accounting officers of trading entities must, at the end of each financial year and after books of account have been closed, declare any surplus or deficit to the relevant treasury. The treasury may apply such surplus to reduce any, proposed allocation to the trading entity, or require that all or part of it be redeposited in the Exchequer bank account.

15.8.3 Where a trading entity suffers a deficit in trading, the relevant treasury must investigate whether:

- (a) the accounting officer of the trading entity mentioned any foreseeable over expenditure in his or her monthly reports;
- (b) appropriate steps were taken to address the deficit; and
- (c) financial misconduct and criminal sanctions should be instituted if (a) and (b) above were not adhered to.

## 15.9 Accounting and reporting

15.9.1 Each treasury must account daily for the cash movements of all bank accounts in the books of its revenue fund.

15.9.2 Each treasury must report monthly to the Minister or MEC responsible for Finance on its revenue fund.

## 15.10 Responsibility for cash management and banking 15.10.1 General

15.10.1.1 The accounting officer, through the chief financial officer,

is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

15.10.1.2 For purposes of these Treasury Regulations, sound cash management includes:

- (a) collecting revenue when it is due and banking it promptly;
- (b) making payments, including transfers to other levels of government and non government entities, no earlier than necessary, with due regard for efficient, effective and economical programme delivery and the government's normal terms for account payments;
- (c) avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier;
- (d) accepting discount to effect early payment only when the payment has been included in the monthly cash flow estimates provided to the relevant treasury;
- (e) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the government are collected and banked promptly;
- (f) accurately forecasting the institution's cash flow requirements so that the national Treasury can optimise its central cash management responsibilities (borrowing to cover cash shortfalls and investing cash surpluses) on behalf of the government;
- (g) timing the in- and outflow of cash;
- (h) recognising the time value of money, i.e. economically, efficiently and effectively managing cash; and
- (i) taking any other action that avoids locking up money unnecessarily and inefficiently, such as managing inventories to the minimum level necessary for efficient and effective programme delivery, and selling surplus or underutilised assets.

15.10.2 Systems, accounting records, procedures and monitoring

15.10.2.1 The chief financial officer must ensure that the institution's systems, records and statements of procedures can meet the purposes of sound cash management.

15.10.2.2 The chief financial officer must monitor the institution's cash management performance on a regular basis and report to the accounting officer, in writing, at least monthly.

### 15.10.3 Banking arrangements

15.10.3.1 Departments, trading entities or constitutional institutions may not open a bank account without the written approval of the relevant treasury.

### 15.11 Private money, private bank accounts and cashing private cheques

15.11.1 Private money may not be deposited into an official bank account, except in accordance with the provisions relating to money held in trust for other persons or bodies; nor may state money be paid into a private bank account.

15.11.2 The safekeeping of private money or personal possessions in a state safe or strongroom is prohibited. However, an accounting officer or a person authorised by the accounting officer may approve arrangements for safeguarding personal effects reasonably held on official premises in the course of official duty (e.g. by providing lockable rooms for staff).

15.11.3 State money may not be used to cash private cheques.

### 15.12 Warrant vouchers, cheques and electronic payments

15.12.1 Accounting officers must assign authority in writing to officials to approve warrant vouchers, cheques or electronic payments.

15.12.2 Officials must sign hand-drawn vouchers or cheques and initial the counterfoils.

15.12.3 All payments in excess of R10 000 must be effected electronically unless otherwise approved by the relevant treasury.

15.12.4 All warrant vouchers and cheques must have at least a crossing of "NOT NEGOTIABLE" between parallel lines. The cancellation of such a crossing is not permitted.

15.12.5 When a warrant voucher or cheque is lost, stolen or damaged, an instruction to stop payment must immediately be issued to the responsible bank. The transaction must be reversed and a new warrant voucher or cheque issued and accounted for.

## Public-private partnerships

### 16.1 Definitions

"affordable", in relation to a public-private partnership (PPP) agreement, means that the financial commitments to be incurred by a department in terms of the agreement can be met by funds:

- (a) designated within the department's existing budget for the departmental function to which the agreement relates; and
- (b) destined for the department in accordance with the relevant treasury's future budgetary projections for the department.

"departmental function" means:

- (a) a service, task, assignment or other function that a department performs:
  - (i) in the public interest; or
  - (ii) on behalf of the public service generally; or
- (b) any part or component of, or in support of, such a service, task, assignment or other function;
- (c) but excludes a service, task, assignment or other function that is not of an ongoing nature.

"net cost", in relation to a departmental function means the full accounting cost of

- (a) performing the function, less any charges or fees collected from users; and
- (b) from consumers for services provided to them in performing the function.

"private party", in relation to a PPP agreement means a party to a PPP agreement other than:

- (a) an institution to which the Act applies;

(b) a municipality or an enterprise or other entity controlled by one or more municipalities; or

(c) the accounting officer, accounting authority or other person or body acting on behalf of an institution, municipality, enterprise or entity referred to in paragraph (a) or (b).

"public-private partnership agreement" means an agreement between a department and a private party in terms of which:

(a) the private party undertakes to perform a departmental function on behalf of the department for a specified or indefinite time;

(b) the private party receives a benefit for performing the function, either by way of:

(i) compensation from a revenue fund;

(ii) charges or fees collected by the private party from users or customers of a service provided to them; or

(iii) a combination of such compensation and such charges or fees;

(c) the private party is generally liable for the risks arising from the performance of the function, subject to paragraph 16.13.1; and

(d) depending on the specifics of the agreement, state facilities, equipment or other state resources may be transferred or made available to the private party.

The definition excludes an agreement or category of agreements exempted by the national Treasury in terms of clause 16.12.

"public sector comparator" means an estimate of the net cost of performing a departmental function in accordance with methods employed and subject to conditions prevailing at the department concerned.

"value for money" means that the net cost of the departmental function, if performed by a private party in terms of a public-private partnership agreement, will:

(a) be lower than the public sector comparator; and

(b) be of a standard at least equivalent to the standard of the function as performed by the institution.

## 16.2 General responsibilities of accounting officers

16.2.1 The accounting officer is responsible for ensuring that the institution complies with these Treasury Regulations and, to this end, implements systems and procedures that:

- (a) provide safeguards against favouritism, improper practices and opportunities for fraud, theft and corruption; and
- (b) are open, competitive and transparent.

## 16.3 Exclusive competency of accounting officers

16.3.1 Only an accounting officer may enter into a PPP agreement on behalf of the institution.

## 16.4 Treasury approval

16.4.1 The accounting officer may not enter into a PPP agreement without the prior written approval of:

- (a) the national Treasury; or
- (b) the relevant provincial treasury, if it is a provincial institution and the national Treasury has, in terms of section 10(1)(b) of the Act, delegated the appropriate powers to the provincial treasury.

16.4.2 The relevant treasury may give such approval only if it is satisfied that the proposed agreement will:

- (a) provide value for money; and
- (b) be affordable for the institution.

16.4.3 When a provincial treasury gives such approval, it must exercise its delegated powers subject to any limitations and qualifications in terms of the national Treasury's delegation.

## 16.5 Feasibility analysis

16.5.1 To determine whether a proposed PPP agreement is in the best interests of an institution, the accounting officer must prepare a feasibility analysis that:

- (a) describes in specific terms:

- (i) the nature of the institutional function concerned; and
  - (ii) the extent to which this function, both legally and by nature, can be performed by a private party in terms of a PPP agreement;
- (b) assesses whether the agreement will:
- (i) provide value for money; and
  - (ii) be affordable for the institution;
- (c) includes any relevant information, figures and the economic criteria used to justify these assessments; and
- (d) explains the capacity of the institution to effectively enforce the agreement, including to monitor and regulate implementation of and performance in terms of the agreement.

16.5.3 If an institution lacks the expertise to assess value for money and affordability or to interpret any PPP agreement offered to it by a private party, the accounting officer of the institution:

- (a) must inform the relevant treasury accordingly; and
- (b) if the relevant treasury so requests, must appoint a specialist consultant for this purpose.

## 16.6 Submission to obtain treasury approval

16.6.1 If the feasibility analysis indicates that a PPP agreement will be in the best interests of the institution, and the institution intends to procure the agreement, the accounting officer must apply for treasury approval in terms of clause 16.4 to:

- (a) the national Treasury; or
- (b) the relevant provincial treasury, if it is a provincial institution and the national Treasury has, in terms of section 10(1)(b) of the Act, delegated the appropriate powers to the provincial treasury.

16.6.2 The application must be accompanied by:

- (a) a copy of the institution's feasibility analysis; and

(b) any other information required by the relevant treasury.

## 16.7 Procurement

16.7.1 An institution may not proceed with the procurement of a PPP agreement unless it has obtained written treasury approval in terms of clause 16.4.

16.7.2 A agreement must be procured in accordance with applicable procurement legislation.

16.7.3 The procurement procedure must include:

- (a) an open and transparent pre-qualification process;
- (b) a competitive bidding process in which only pre-qualified organisations may participate; and
- (c) criteria for the evaluation of bids to identify the bid that represents the best value for money.

16.7.4 The procurement procedure may include:

- (a) a preference for categories of bidders, such as persons disadvantaged by unfair discrimination, provided that this does not compromise the value for money requirement; and
- (b) incentives for recognising and rewarding genuine innovators in the case of unsolicited proposals, provided that these incentives do not compromise the competitive bidding process.

## 16.8 Contracting public-private partnership agreements

16.8.1 Before the accounting officer of an institution enters into a PPP agreement, he or she must:

- (a) obtain approval from the relevant treasury for all budgetary commitments; and
- (b) ensure that the financial commitments in terms of the agreement:
  - (i) are denominated in rand; and
  - (ii) will not be affected by fluctuations in the value of the rand against other currencies.

## 16.9 Management of public-private partnership agreements

16.9.1 The accounting officer is responsible for ensuring that a PPP agreement is properly enforced, and must establish mechanisms and procedures for:

- (a) monitoring and regulating the implementation of, and performance in terms of, the agreement;
- (b) liaising with the private party;
- (c) resolving disputes and differences with the private party; and
- (d) generally overseeing the day-to-day management of the agreement.

16.9.2 A PPP agreement does not divest the accounting officer of the responsibility for ensuring that the relevant institutional function is effectively and efficiently performed in the public interest.

## 16.10 Amendment of public-private partnership agreements

16.10.1 Only the accounting officer may enter into an agreement to amend a agreement, and only with the prior written approval of the national Treasury.

16.10.2 The national Treasury will approve an amendment only if it is satisfied that the amended PPP agreement will:

- (a) provide value for money;
- (b) be affordable for the institution; and
- (c) generally be in the best interests of the institution.

16.10.3 The accounting officer must substantially follow the procedure prescribed by clauses 16.5 and 16.6 for obtaining treasury approval.

## 16.11 Certain agreements not binding on the state

16.11.1 A agreement and an agreement amending a agreement do not bind the state if the agreement was entered into on behalf of an institution:

- (a) by a person other than the accounting officer of the institution;  
or
- (b) without the approval of the national Treasury.

## 16.12 Exemptions

16.12.1 The national Treasury may exempt from the application of these Treasury Regulations any agreement or category of agreements that fall within the definition of "public-private partnership agreement", if these are of a nature or have a monetary value deemed not to warrant treasury control.

## 16.13 General

16.13.1 An agreement between an institution and a private party for the latter to perform an institutional function without accepting the significant risks is not a PPP agreement and must be dealt with as a borrowing transaction in terms of the appropriate legislation.

# PART 7

## Accounting and reporting standards

## 17

### Basic accounting records and related issues

#### 17.1 Use of control accounts

17.1.1 All transactions must be supported by authentic and verifiable source documents, clearly indicating the approved accounting allocation.

17.1.2 Should it be necessary, in exceptional cases, to account for a transaction in a control account because the classification has not been resolved, the accounting officer, or his or her designate, must ensure that:

- (a) the sources of the transactions are readily identifiable;
- (b) amounts included in the control accounts are, each month, cleared and correctly allocated to the relevant cost centres;
- (c) monthly reconciliations are performed to confirm the balance of each account; and
- (d) reports are provided to the chief financial officer about uncleared items that have been in the institution's control accounts for more than six months.

## 17.2 Availability of financial information

17.2.1 Accounting officers must, subject to the provisions of the National Archives of South Africa Act, 1996 (No. 43 of 1996), retain all financial information in its original form, as follows:

- (a) information relating to one financial year - for one year after the tabling in Parliament or the provincial legislature of the audit report for the financial year in question; or
- (b) information relating to more than one financial year- for one year after the date of the audit report for the last of the financial years to which the information relates.

17.2.2 After the expiry of the above retention periods, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and ensures that the information can be reproduced, if necessary, as permissible evidence in a court of law.

17.2.3 Irrespective of paragraph 17.2.1, the following standards apply to the retention of certain types of record:

Type of record	Number of years after which records can be disposed of
General ledger and cash books or similar records	15
Main transaction summary records, including general journals and transaction summaries	10
Internal audit reports	
System appraisals	
Primary evidentiary records, including copies of forms issued for value, vouchers to support payments made, pay sheets, returned warrant vouchers or cheques, invoices and similar records associated with the receipt or payment of money	5

Subsidiary ledgers, including inventory cards and records relating to assets no longer held or liabilities that have been discharged

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Supplementary accounting records, including, for example, cash 5 register strips, bank statements and time sheets

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General and incidental source documents not included above, 5 including stock issue and receivable notes, copies of official orders (other than the copies used to substantiate payments or for unperformed contracts), bank deposit books and post registers

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17.2.4 When financial information is required as evidence in proceedings before a court, Parliament, a provincial legislature, an official inquiry or otherwise, or for purposes of an audit, it must be secured in its then current form until no longer required, even if the national Archivist has authorised its disposal.

### 17.3 Changes to financial systems

17.3.1 Institutions must not amend existing or institute new computerised systems that will affect financial administration without first consulting the national Treasury.

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### Financial reports, annual financial statements and annual reports

18.1 Reports of anticipated and actual expenditure and revenue by departments and provinces

18.1.1 The accounting officer must annually submit to the relevant treasury a breakdown of anticipated revenue and expenditure in the format prescribed in Annexure 2, no later than the last working day of February preceding the financial year to which it relates.

18.1.2 Once such amounts have been approved, modified as necessary after consultation with the relevant treasury, the accounting officer may not draw from the revenue fund more than the amount approved for a month, without prior written approval from the relevant treasury.

18.1.3 If the accounting officer deems it necessary to adjust the approved projections, the proposed adjustments must be motivated to the relevant treasury for evaluation against the availability of funds in the Exchequer.

18.1.4 In terms of subsections 40(4)(b) and (c) of the Act, the accounting officer must submit to the relevant treasury and executive authority within 15 days of the end of each month, information on:

- (a) the actual revenue and expenditure for the month just ended, in the format set out in Annexure 3;
- (b) projections of anticipated expenditure and revenue for the remainder of the current financial year in the same format as Annexure 3; and
- (c) any material variances and a summary of actions to ensure that the projected expenditure and revenue remain within the budget.

18.1.5 To enable the national Treasury to publish reports on the state of the budget in terms of section 32 of the Act, provincial treasuries must submit projections of their expenditure, revenue and borrowings on or before the last working day of February, in the format set out in Annexure 4. Actual expenditure must be submitted by the 22nd day of each month in the format set out in Annexure 5.

18.1.6 Pursuant to paragraph 18.1.5, provincial treasuries must submit a certificate to the effect that the information supplied in Annexures 4 and 5 has been verified.

## 18.2 Form and content of annual financial statements

18.2.1 For the financial year ending on 31 March 2001, the following reporting standards comprise generally recognised accounting practice and must be adhered to, unless otherwise approved by the national Treasury:

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Reporting entity	Generally recognised accounting practice
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National and provincial revenue funds	Annual financial statements must consist of: <ul style="list-style-type: none"><li>(a) a statement of liabilities and financially related assets;</li><li>(b) an income statement;</li><li>(c) a cash flow statement;</li></ul>
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- (d) notes to the annual financial statements;
- (e) a report on the financial position of and performance by the Treasury; and
- (f) such other statements as may be prescribed by the Accounting Standards Board.

The annual financial statements must be prepared on a cash basis and must be accompanied by the audit opinion of the Auditor-General.

The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the relevant revenue fund.

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Departments      Annual financial statements must consist of:  
Parliament      (a) a balance sheet;  
Provincial        (b) an income statement;  
Legislatures     (c) a cash flow statement;  
                      (d) notes to the annual financial statements; and  
                      (e) such other statements as may be prescribed by  
                      the Accounting Standards Board.

The statements must be prepared on a cash basis and be accompanied by the audit opinion of the Auditor-General.

The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the institution.

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Trading entities   Annual financial statements must consist of:  
Constitutional    (a) a balance sheet;  
Institutions        (b) an income statement;  
Public entities    (c) a cash flow statement;  
                      (d) notes to the annual financial statements; and  
                      (e) such other statements as may be prescribed by  
                      the Accounting Standards Board.

The annual financial statements must be accompanied by the audit opinion of the Auditor-General or the relevant auditor (in the case of public entities).

Unless otherwise approved by the national Treasury, the annual financial statements must, in conformity with Statements of Generally Accepted Accounting Practice issued by the South African Institute of Chartered Accountants, fairly represent the financial position, financial performance and cash flows of the institution at the end of the financial year concerned.

The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the institution.

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### 18.3 Contents of annual reports

18.3.1 In preparing the annual report of an institution, the accounting officer must:

- (a) in the case of a department or trading entity, comply with the requirements prescribed in Chapter 1, Part III B of the Public Service Regulations, 1999;
- (b) include information about the institution's efficiency, economy and effectiveness in delivering programmes and achieving its objectives and outcomes against the measures and indicators set out in any strategic plan for the year under consideration.
- (c) include any additional information required by Parliament or the provincial legislature; and
- (d) report on the use of foreign aid assistance, detailing the source and intended use of the assistance (including the value of any aid-in-kind in South African rand), performance information on the institution's use of the assistance, and any pending applications for assistance.

18.3.2 The provisions of 18.3.1(b) become applicable from 1 April 2002.

### 8.4 Additional annual reporting requirements for departments controlling trading entities and public entities

18.4.1 A department's annual report must include a list of trading and/or public entities controlled by the department, together with:

- (a) an indication of the legislation under which the trading and/or

public entity was established;

(b) a statement of the functions of each trading and/or public entity;  
and

(c) the accountability arrangements established between the accounting officer and the management of the trading or public entity.

19

Money and property held in trust

19.1 Responsibility for trust money and property

19.1.1 For purposes of these Treasury Regulations, trust money or property is money or property held by an institution on behalf of other persons or entities in terms of a deed of trust or equivalent instrument that details the specific purposes for which it may be used.

19.1.2 The accounting officer, through the chief financial officer or a duly authorised agent, is responsible for the safekeeping and proper use of trust money and property, in accordance with the relevant deed of trust or equivalent instrument and subject to national Treasury control.

19.1.3 The institution, or its duly authorised agent, may charge a fee for the administration of a trust account at rates approved by the board of trustees or, in its absence, by the relevant treasury. Such fees shall be payable from the trust account and are revenue accruing to the relevant revenue fund.

19.2 Trust money must be kept in a trust account

19.2.1 The accounting officer must, for each separate portion of trust money:

(a) open and maintain a separate bank account, called a trust account;

(b) assign the trust account a name or title that clearly identifies the account;

(c) maintain separate accounting records for each trust account, of the transactions, including investment transactions, undertaken; and

(d) include in the annual financial statements, by way of separate financial statements in the prescribed format, a summary of the

receipts, expenditures, investment transactions and opening and closing balances of each trust account.

### 19.3 Investment of trust money

19.3.1 The accounting officer may, provided that it does not conflict with the terms of the trust arrangement, invest any trust money on such terms and conditions as may seem appropriate:

- (a) on deposit with any bank within or outside South Africa as approved by the national Treasury;
- (b) in public securities issued by the government; or
- (c) in other securities approved by the national Treasury.

19.3.2 The proceeds of an investment, including interest and realised capital gains, and all money received from the realisation, sale or conversion of securities, shall be treated as money of the trust on whose behalf the money was invested.

### 19.4 Return of trust money and unclaimed trust money

19.4.1 When trust money becomes repayable to the depositor, or to another person entitled thereto, interest shall be payable according to any conditions that apply to the management of the trust money.

19.4.2 Any trust money unclaimed for a year (or such longer period as the national Treasury may direct) after becoming payable is, together with any interest, deemed to be state money and must be transferred to the Exchequer bank account of the relevant revenue fund.

19.4.3 If any person, to the satisfaction of the relevant treasury, makes a valid claim to trust money that has been deemed state money, the money shall be paid to that person out of the relevant revenue fund, in terms of section 15(1)(c) and 24(1)(b) of the Act.

## PART 8

### Miscellaneous

## 20.1 Definitions

"charge", for goods or services, includes a fee but does not include a fine, levy or tax.

"full cost" of goods or services means all costs attributable to the goods or services, including:

- (a) direct and indirect labour and management costs;
- (b) materials;
- (c) costs of physical assets consumed; and
- (d) taxes and tax equivalent costs, other than income tax.

"goods" include products and items.

"services" include professional services.

"trading entity" means an entity operating within the administration of a department for the provision or sale of goods or services, and established by a department with the approval of the relevant treasury.

"user" of goods or services means an entity or person that uses the goods or services supplied by a trading entity.

## 20.2 Establishment

20.2.1 Trading entities can be established when a department renders to any user goods or services for which a charge to recover full cost can be levied. National departments require national Treasury approval to establish trading entities; provincial departments require approval by the relevant provincial treasury.

20.2.2 Provincial treasuries may only establish new trading entities after consultation with the national Treasury.

## 20.3 Capital requirements

20.3.1 The initial capital requirements of the trading entity must be determined in consultation with the relevant treasury, and increases in such requirements are also subject to treasury approval.

20.3.2 In deciding charges for goods or services, the accounting officer of the trading entity must aim to recover the full cost of

providing the goods or services, unless the relevant treasury approves lower charges.

20.3.3 The accounting officer must review rates for user charges at least once a financial year (to ensure capital maintenance), and any tariff increases are subject to approval by the relevant treasury.

## 20.4 Policy for fixed asset depreciation

20.4.1 The accounting officer of the trading entity must determine an accounting policy for the depreciation of fixed assets, in consultation with the relevant treasury.

## 20.5 Disposal of assets

20.5.1 When assets are disposed of in a transaction that is abnormal compared to the normal operating activities of the trading entity, the transaction must be approved by the relevant treasury and the proceeds deposited into the relevant revenue fund.

## 20.6 Surrender of surplus funds

20.6.1 Surplus funds must be dealt with in accordance with the provisions of paragraph 15.8.2.

## 20.7 Applicability of other Treasury Regulations

20.7.1 Unless otherwise stated, trading entities must be operated in accordance with all other Treasury Regulations.

21

## Committees of Inquiry

### 21.1 Definitions

"commission" means a commission of inquiry appointed by the President to investigate a matter of public concern and does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise.

"committee" means a committee of inquiry appointed by the executive authority and includes an interdepartmental committee of inquiry, but does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise.

"non-official member" means a person who is not an official member.

"official member" means a person as defined in section 8(1) of the Public Service Act, 1994 (Proclamation No. R.103 of 1994), a member of Parliament or a judge, as well as a person employed by a body established by an Act of Parliament that receives its funds wholly, or in part, from the National Revenue Fund and who represents the department or body where he or she is employed as a member of a commission or committee.

## 21.2 Remuneration of members

21.2.1 An official member must receive no additional remuneration and must receive subsistence and other allowances in accordance with his or her conditions of service.

21.2.2 A non-official member must be remunerated according to scales approved by the national Treasury.

21.2.3 Should non-official members not be prepared to accept their remuneration packages, the accounting officer, in consultation with the executive authority, can determine such remuneration without consulting the national Treasury, provided that:

- (a) the terms of reference are properly defined in terms of time and cost;
- (b) the tariffs are reasonable compared to current market tariffs; and
- (c) funds are available for this purpose.

## 21.3 Services rendered by members during private time

21.3.1 Should the chairperson request a non-official member of a commission or committee to render services in his or her private time, other than the normal preparations for meetings, the person may be paid an honorarium (within the budget), as determined by the accounting officer and the executive authority. In the case of official members, section 30 of the Public Service Act must be complied with.

## Gifts, donations and sponsorships

### 22.1 Granting of gifts, donations and sponsorships by the state

22.1.1 The relevant treasury may approve gifts, donations and sponsorships of state money and other movable property in the interest of

the state, provided that when such cash amounts exceed R100 000, funds must first be voted by Parliament or the provincial legislature.

22.1.2 Accounting officers need not refer to the relevant treasury when gifts, donations and sponsorships in the interest of the state do not exceed R10 000.

## 22.2 Acceptance of gifts, donations and sponsorships to the state

22.2.1 Approval must be obtained from the accounting officer before any gift, donation or sponsorship to the state, whether in cash or kind, is accepted, provided that there are no recurrent costs to the state.

22.2.2 All gifts, donations or sponsorships in cash must be paid into the relevant revenue fund.

22.2.3 Where it is not apparent for what purpose a gift, donation or sponsorship should be applied, the Minister or the MEC responsible for Finance may decide how it must be utilised. Where a gift is in cash, the Minister or the MEC responsible for Finance may, notwithstanding any provision to the contrary in any law, direct that for purposes of the Act, the gift is deemed to be revenue accruing to the revenue fund.

22.2.4 All gifts, donations or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution.

22.2.5 Donor funding received in terms of the Reconstruction and Development Fund Act (No. 7 of 1994, as amended by Act No. 79 of 1998) must be dealt with as prescribed by the treasury from time to time.

## 22.3 Donations of immovable property by the state

22.3.1 The relevant treasury's approval must be obtained before institutions offer any gift of immovable property.

22.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift of immovable property is offered.

## 22.4 Donations of immovable property to the state

22.4.1 The relevant treasury's approval must be obtained before any institution accepts any gift of immovable property.

22.4.2 Institutions must submit to the relevant treasury the purpose of

and conditions under which the gift of immovable property is offered.

## 22.5 Identity of donors and sponsors

22.5.1 When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the relevant treasury a certificate from both the Public Protector and the Auditor-General that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.

22.5.2 The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

22.5.3 When a donor or sponsor objects to these stipulations, the donation or sponsorship must be rejected.

## 23

### Payments, refunds and remissions as an act of grace or favour

#### 23.1 General

23.1.1 The principles in this chapter apply to payments, refunds and remissions as an act of grace or favour pertaining to institutions.

23.1.2 Where no legislative authority exists, the accounting officer must seek approval from the relevant treasury prior to:

- (a) the remission of money due to a revenue fund; and
- (b) payments and refunds from a revenue fund as an act of grace or favour; and
- (c) where:
  - (i) more than R100 000 is involved, seek Parliament or provincial legislature approval by including the item separately in the estimates of expenditure and, in the case of remissions, recouping the revenue by a payment from the relevant vote; and
  - (ii) R100 000 or less is involved, the revenue, in the case of remissions, must be recouped by means of a payment from the relevant vote.

23.1.3 Where there is doubt as to whether an amount may be written off as irrecoverable or should be treated as a remission of grace, the relevant treasury must make the decision.

23.1.4 All remissions, refunds or payments made as an act of grace or favour during the financial year must be disclosed as a note to the annual financial statements of the institution.

## 24

### Public entities

#### 24.1 General

24.1.1 In addition to this chapter, Chapter 4 (Corporate management), Chapter 5 (Financial misconduct) and clause 18.2 of Chapter 18 (Financial reports, annual financial statements and annual reports) also apply to public entities. Reference to accounting officers in the aforementioned chapters should be construed as accounting authorities. Further, reference to employees refer to employees of public entities.

24.1.2 Public entities must submit all information required by the national Treasury in terms of the Act to the Registrar of Public Entities established within the national Treasury.

#### 24.2 Listing

24.2.1 The executive authority responsible for a public entity must designate an accounting officer of a department, under the executive authority, to whom corporate plans in terms of section 52 of the Act and budgets of estimated revenue and expenditure in terms of section 53 of the Act must be submitted.

24.2.2 The executive authority must inform the Minister of Finance no later than 1 October 2000 of any public entities under his or her ownership control not listed in either Schedule 2 or 3 of the Act.

24.2.3 The accounting authority of a department should obtain Treasury approval if the department intends to establish a public entity. The following information must be submitted to the Registrar of Public Entities:

- (a) motivation for the establishment of an entity;

- (b) in the case of a provincial entity, the approval of the provincial treasury;
- (c) intended mandate of the public entity;
- (d) name of the proposed entity;
- (e) executive authority;
- (f) proposed date of incorporation;
- (g) responsibility for the appointment of the chief executive authority;
- (h) responsibility for the appointment of the board of directors;
- (i) proposed subsidiaries;
- (j) enabling legislation;
- (k) contact person(s);
- (l) company secretary;
- (m) financial implications for the relevant revenue fund;
- (n) corporate plan, as contemplated in section 52 of the Act, indicating:
  - (i) capital needs;
  - (ii) future financial demands on a revenue fund.

24.2.4 An accounting authority of a public entity not listed in terms of section 47(2) of the Act must submit the following information to the Registrar of Public Entities:

- (a) name of the public entity;
- (b) mandate of the public entity;
- (c) executive authority responsible for the public entity,
- (d) enabling legislation;

- (e) date of incorporation;
- (f) board members;
- (g) registered address and telephone numbers;
- (h) executive management;
- (i) company secretary;
- (j) responsibility for the appointment of the chief executive authority;
- (k) responsibility for the appointment of the board of directors;
- (l) subsidiaries;
- (m) audited annual financial statements;
- (n) amount of budgetary transfers received over the past three financial years;
- (o) corporate plan as contemplated in section 52 of the Act.

### 24.3 Contingent liabilities and borrowing

24.3.1 National public entities listed in Schedule 3A and provincial public entities listed in Schedule 3C may not borrow money except for bridging purposes, with the approval of the Minister of Finance, subject to the following conditions:

- (a) the debt must be cleared within the current financial year;
- (b) the provisions of the Borrowing Powers of Provincial Government Act, 1996 are adhered to and prior written approval is obtained from the MEC responsible for Finance (in the case of provincial public entities);
- (c) borrowing may not exceed a limit predetermined by the Minister in each case;
- (d) foreign borrowing may not be undertaken;
- (e) the request for borrowing for bridging purposes must be submitted to the Minister of Finance 30 days in advance of the proposed borrowing;

(f) a detailed cash flow and income and expenditure statement must accompany the request, indicating how the debt will be cleared during the current financial year; and

(g) the terms and conditions of the proposed bridging finance must also accompany the request.

24.3.2 A public entity listed in either Schedule 2 or 3 must, by way of a note, report in their financial statements on all contingent liabilities.

24.3.3 Where such contingent liability has a reasonable prospect of realising in the current financial year, and an amount can be established, it should be provided for in the financial statement and corporate plan or budget.

24.3.4 Government business enterprises listed in Schedules 2, 3B or 3D must, in their corporate plan, submit to the relevant treasury a three-year borrowing programme beginning with the next financial year. Quarterly reports on the borrowing programme must be submitted to the relevant treasury, reflecting actual borrowing for that quarter and any update in the borrowing programme.

24.3.5 Provincial public entities listed in Schedules 3C and 3D must also submit their three-year borrowing programmes and quarterly updates to the national Treasury.

24.3.6 The indicative terms and conditions of the borrowings must accompany the borrowing programme and the entity must, in the quarterly submissions, show how it addressed the relevant treasury's concerns regarding its borrowing programme. The borrowing programme must include:

- (a) information on proposed domestic borrowing;
- (b) information on proposed foreign borrowing within the prescribed limit;
- (c) short- and long-term borrowing;
- (d) the relation of borrowing to a pre-approved corporate plan;
- (e) the maturity profile of all debt;
- (f) the confirmation of compliance with existing and proposed loan covenants;

(g) debts guaranteed by government; and

(h) motivations for government guarantees, if required.

Annexures

**IMAGE CLICK ON THE FOLLOWING LINKS TO SEE ABOVEMENTIONED ANNEXURES.**

[1](#)

[2](#)

[3](#)

[4](#)

[5a](#)

[5b](#)

**PLEASE NOTE! IMAGES OLDER THAN TWO YEARS WILL BE DELETED, CONTACT SABINET ONLINE FOR A PHOTOCOPY.**

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NOTICE 2937 OF 2000

MINISTRY OF FINANCE

INTEREST RATE FOR DEBT OWING TO THE STATE

It is hereby notified that the Minister of Finance has, in terms of section 80 (1) (a) and section 80 (1) (b) of the Public Finance Management Act, Act No. 1 of 1999 (as amended by Act No. 29 of 1999), fixed the uniform interest rate applicable to loans granted out of a Revenue Fund and all other debts which must be paid into a Revenue Fund, at fourteen and three quarter (14,75%) percent per annum, with effect from 1 September 2000.

(25 August 2000)