
SCHEDULE

Treasury Regulations

**for departments, trading entities,
constitutional institutions and public
entities**

**Issued in terms of the
Public Finance Management Act, 1999**

National Treasury
Republic of South Africa
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PART 1

Definitions, application and date of commencement

1

General definitions, application and date of commencement

1.1 General definitions

In these *Treasury Regulations*, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –

“Act” means the Public Finance Management Act (Act 1 of 1999), as amended;

“debt” means an amount owing to the state;

“division of revenue grants” mean allocations from the national government to provinces and local government as listed in the schedules to the annual Division of Revenue Act, including transfers in terms of that Act;

“executive authority” in relation to a constitutional institution consisting of a body of persons, means the chairperson of the constitutional institution, and in relation to a constitutional institution with a single office bearer, means the incumbent of that office;

[“finance lease” refers to a contract that transfers the risks, rewards, rights and obligations incident to ownership to the lessee and is recorded as a purchase of equipment by means of long-term borrowing;]

“head official of the treasury” means the administrative head of the department responsible for financial and fiscal matters, which forms part of the relevant treasury;

“institution” means a department or a constitutional institution;

“official” means a person in the employ of a department or constitutional institution;

[“operating lease” refers to a contract where the lessor retains the risks and obligations incident to ownership and payments by the lessee are recorded as rental expenses.]

1.2 Application

1.2.1 These *Treasury Regulations* apply –

- (a) to all departments, but only to the extent as indicated in regulations 1 to 24 and 26;
- (b) to all constitutional institutions, but only to the extent as indicated in regulations 1 to 22;
- (c) to all public entities listed in Schedule 2, but only to the extent as indicated in paragraph 6.1.2 and regulations 24, 25, 27 to 29 and 31 to 33;
- (d) to all public entities listed in Schedules 3A and 3C, but only to the extent as indicated in paragraph 6.1.2, and regulations 16, 16A, 24 to 28 and 30 to 33;
- (e) to all public entities listed in Schedules 3B and 3D, but only to the extent as indicated in paragraph 6.1.2 and regulations 16, 24, 25, 27 to 29 and 31 to 33; and
- (f) to the South African Revenue Service as a Schedule 3A public entity but only to the extent as indicated in paragraphs 6.1.2, regulations 16, 16A, 24 to 28 and 30 to 33.

- 1.2.2 These *Treasury regulations*, read in context, also apply to the South African Revenue Service as a department, but only to the extent that it collects and administers state revenue and as indicated in regulations 6.1.2, 7.1, 7.2, 11.1, 11.2.1(a), 11.3, 11.4, 12.1.1, 12.2.1(a) to (d), 12.5.1, 12.6, 12.7.1 to 12.7.3, 15.4, 15.7, 15.10.2, 15.11, 17.2, and 22.1.
- 1.2.3 For purposes of regulation 1.2.2, the *Treasury Regulations* that do apply to the South African Revenue Service, apply as though it were a department with its Commissioner as its accounting officer.

1.3 Date of commencement

- 1.3.1 These *Treasury Regulations* take effect from [27 May 2002] 15 March 2005, unless otherwise indicated in the text.

PART 2

Management arrangements

2

Corporate management

2.1 Chief financial officer

- 2.1.1 Unless directed otherwise by the relevant treasury, each institution must have a chief financial officer serving on the senior management team.
- 2.1.2 The chief financial officer is directly accountable to the accounting officer.
- 2.1.3 Without limiting the right of the accounting officer to assign specific responsibilities, the general responsibility of the chief financial officer is to assist the accounting officer in discharging the duties prescribed in Part 2 of Chapter 5 of the Act and the annual Division of Revenue Act. These duties relate to the effective financial management of the institution including the exercise of sound budgeting and budgetary control practices; the operation of internal controls and the timely production of financial reports.

Internal control

3.1 Audit committees [Sections 76(4)(d) and 77 of the PFMA]

- 3.1.1 If considered feasible, the relevant treasury may direct that institutions share audit committees. If such a determination is made, the Auditor-General must be informed within 30 days of the determination.
- 3.1.2 In the case of a non-shared audit committee, the accounting officer of an institution must appoint audit committee members in consultation with the relevant executive authority.
- 3.1.3 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 authorities.
- 3.1.4 The chairperson of an audit committee must be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be a political office bearer.
- 3.1.5 Audit committees must be constituted so as to ensure their independence and their membership must be disclosed in the annual report of the institution.
- 3.1.6 Members of an audit committee who have been appointed from outside the public service pursuant to section 77(a)(i) of the Act must have appropriate experience, be appointed on contract and be remunerated in accordance with paragraph 20.2.2 of these regulations. Should it be deemed necessary, such members may be remunerated taking into account tariffs determined by the South African Institute of Chartered Accountants in consultation with the Auditor-General as provided for in paragraph 20.2.3.
- 3.1.7 The relevant executive authority must concur with any premature termination of the services of a person serving on an audit committee.
- 3.1.8 An audit committee must operate in terms of a written terms of reference, which must deal adequately with its membership, authority and responsibilities. The terms of reference must be reviewed at least annually to ensure its relevance.
- 3.1.9 It must be disclosed in the institution's annual report whether or not the audit committee has adopted a formal terms of reference and if so, whether the committee satisfied its responsibilities for the year, in compliance with its terms of reference.
- 3.1.10 The audit committee must, amongst others, review the following:
 - (a) the effectiveness of the internal control systems;
 - (b) the effectiveness of the internal audit function;
 - (c) the risk areas of the institution's operations to be covered in the scope of internal and external audits;
 - (d) the adequacy, reliability and accuracy of the financial information provided to management and other users of such information;
 - (e) any accounting and auditing concerns identified as a result of internal and external audits;
 - (f) the institution's compliance with legal and regulatory provisions; and

- (g) the activities of the internal audit function, including its annual work programme, co-ordination with the external auditors, the reports of significant investigations and the responses of management to specific recommendations.
- 3.1.11 The audit committee must have explicit authority to investigate matters within its powers, as identified in the written terms of reference. The audit committee must be provided with the resources it needs to investigate such matters and shall have full access to information. The audit committee must safeguard all the information supplied to it within the ambit of the law.
- 3.1.12 An audit committee must report and make recommendations to the accounting officer, but the accounting officer retains responsibility for implementing such recommendations.
- 3.1.13 In addition to the above, an audit committee must, in the annual report of the institution, comment on –
 - (a) the effectiveness of internal control;
 - (b) the quality of in year management and monthly/quarterly reports submitted in terms of the Act and the Division of Revenue Act; and
 - (c) its evaluation of the annual financial statements.
- 3.1.14 Should a report to an audit committee, whether from the internal audit function or any other source, 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.
- 3.1.15 An audit committee may communicate any concerns it deems necessary to the executive authority, the relevant treasury and the Auditor-General.
- 3.1.16 The audit committee must meet at least annually with the Auditor-General to ensure that there are no unresolved issues of concern.

3.2 Internal controls and internal audit [Sections 38(1)(a)(i) and 76(4)(e) of the PFMA]

- 3.2.1 The accounting officer must ensure that a risk assessment is conducted regularly to identify emerging risks of the institution. A risk management strategy, which must include a fraud prevention plan, must be used to direct internal audit effort and priority, and to determine the skills required of managers and staff to improve controls and to manage these risks. The strategy must be clearly communicated to all officials to ensure that the risk management strategy is incorporated into the language and culture of the institution.
- 3.2.2 Each institution to which these *Regulations* apply must have an internal audit function.
- 3.2.3 If considered feasible, the relevant treasury may direct that institutions share internal audit functions. If such a determination is made, the Auditor-General must be informed within 30 days of the determination.
- 3.2.4 An internal audit function may be partly or wholly contracted to an external organisation with specialist audit expertise, provided that its selection is in accordance with the relevant government's competitive tendering procedures.
- 3.2.5 The purpose, authority and responsibility of the internal audit function must, in consultation with the audit committee, be formally defined in an audit charter and be consistent with the Institute of Internal Auditors ("IIA") definition of internal auditing.
- 3.2.6 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.

- 3.2.7 An internal audit function 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 first year of the rolling three-year strategic internal audit plan;
 - (c) plans indicating the proposed scope of each audit in the annual internal audit plan; and
 - (d) a quarterly report to the audit committee detailing its performance against the annual internal audit plan, to allow effective monitoring and possible intervention.
- 3.2.8 An internal audit function must assess the operational procedure and monitoring mechanisms over all transfers made and received, including transfers in terms of the annual Division of Revenue Act.
- 3.2.9 An internal audit function must report directly to the accounting officer and shall report at all audit committee meetings. The function must be independent of activities that are audited, with no limitation on its access to information.
- 3.2.10 The internal audit function must co-ordinate with other internal and external providers of assurance to ensure proper coverage and to minimise duplication of effort.
- 3.2.11 The internal audit function must assist the accounting officer in maintaining efficient and effective controls by evaluating those controls to determine their effectiveness and efficiency, and by developing recommendations for enhancement or improvement. The controls subject to evaluation should encompass the following-
- (a) the information systems environment;
 - (b) the reliability and integrity of financial and operational information;
 - (c) the effectiveness of operations;
 - (d) safeguarding of assets; and
 - (e) compliance with laws, regulations and controls.
- 3.2.12 The internal audit function must assist the accounting officer in achieving the objectives of the institution by evaluating and developing recommendations for the enhancement or improvement of the processes through which -
- (a) objectives and values are established and communicated;
 - (b) the accomplishment of objectives is monitored;
 - (c) accountability is ensured; and
 - (d) corporate values are preserved.

Financial misconduct

4.1 Investigation of alleged financial misconduct [Sections 85(1)(b), (c) and (d) of the PFMA]

- 4.1.1 If an official is alleged to have committed financial misconduct, the accounting officer of the institution must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts and agreements applicable in the public service.
- 4.1.2 The accounting officer must ensure that such an investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.
- 4.1.3 If an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts applicable and agreements applicable in the public service.
- 4.1.4 A relevant treasury may –
 - (a) direct that an official 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.

4.2 Criminal proceedings [Section 86 of the PFMA]

- 4.2.1 The accounting officer must advise the executive authority, relevant treasury and the Auditor-General of any criminal charges it has laid against any person in terms of section 86 of the Act.
- 4.2.2 The relevant treasury may direct an institution to lay criminal charges against any person should an accounting officer fail to take appropriate action.

4.3 Reporting [Section 85(1)(a) and (e) of the PFMA]

- 4.3.1 The accounting officer of a department must, as soon as the disciplinary proceedings are completed, report to the executive authority, the Department of Public Service and Administration and the Public Service Commission on the outcome, including –
 - (a) the name and rank of the official against whom the proceedings were instituted;
 - (b) the charges, indicating the financial misconduct the official is alleged to have committed;
 - (c) the findings;
 - (d) any sanction imposed on the official; and
 - (e) any further action to be taken against the official, including criminal charges or civil proceedings.

- 4.3.2 The accounting officer of a constitutional institution must report the information required in terms of paragraph 4.3.1 (a) to (e) of these regulations to Parliament.
- 4.3.[2]3 The **[institution]** accounting officer of a department must inform the executive authority, the relevant treasury, the Department of Public Service and Administration and the Public Service Commission of the outcome of any criminal proceedings instituted against any person for financial misconduct in terms of section 86 of the Act, whilst the accounting officer of a constitutional institution must inform Parliament of such outcomes.
- 4.3.[3]4 The accounting officer of an institution must, on an annual basis, submit to the provincial treasury (if applicable), the National Treasury and the Auditor-General a schedule of –
- (a) the outcome of any disciplinary proceedings and/or criminal charges;
 - (b) the names and ranks of officials involved; and
 - (c) the sanctions and any further actions taken against these officials.
- 4.3.[4]5 The schedule mentioned in paragraph **[4.3.3]** 4.3.4 must be accompanied by a report which refers to any changes made to the institution's systems of financial and risk management as a result of any investigation.

PART 3

Planning and budgeting

Strategic Planning

5.1 Annual preparation of strategic plans

- 5.1.1 Each year, the accounting officer of an institution must prepare a strategic plan for the forthcoming MTEF period for approval by the relevant executive authority.

5.2 Submission and contents of strategic plans

- 5.2.1 In order to facilitate the discussion of individual votes, the approved strategic plan must be tabled in Parliament or the relevant legislature at least 7 days prior to the discussion of the department's budget vote.

- 5.2.2 The strategic plan must –

- (a) cover a period of three years and be consistent with the institution's published medium term expenditure estimates;
- (b) include specific Constitutional and other legislative, functional and policy mandates that indicate the output deliverables for which the institution is responsible;
- (c) include policy developments and legislative changes that influence programme spending plans over the three-year period;
- (d) include the measurable objectives, expected outcomes, programme outputs, indicators (measures) and targets of the institution's programmes ;
- (e) include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance of physical assets;
- (f) include details of proposed acquisitions of financial assets or capital transfers and plans for the management of financial assets and liabilities;
- (g) include multi-year projections of income and projected receipts from the sale of assets;
- (h) include details of the Service Delivery Improvement Programme;
- (i) include details of proposed information technology acquisition or expansion in reference to an information technology plan; and
- (j) for departments, include the requirements of Chapter 1, Part III B of the *Public Service Regulations*, 2001.

- 5.2.3 The strategic plan must form the basis for the annual reports of accounting officers as required by sections 40(1)(d) and (e) of the Act.

5.3 Evaluation of performance [Section 27(4) read with 36(5) of the PFMA]

- 5.3.1 The accounting officer of an institution must establish procedures for quarterly reporting to the executive authority to facilitate effective performance monitoring, evaluation and corrective action.

6

Budgeting and related matters

6.1 Annual budget circular

- 6.1.1 The accounting officer of a department 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.
- 6.1.2 The accounting officer of a constitutional institution or the accounting authority of a public entity who receives transfers **[payments]** appropriated by vote must provide such information as may be required by the accounting officer responsible for the vote for the purposes of complying with a budget circular. A budget submission by such a constitutional institution or public entity must be made through the accounting officer of the department responsible for transfers **[payments]** to that constitutional institution or public entity.
- 6.1.3 An accounting officer of a budget vote must ensure that the budget submission for that vote includes appropriate supporting information in respect of constitutional institutions and public entities receiving transfers **[payments on]** from that vote.

6.2 Formats of the annual budget [Section 27(3) of the PFMA]

- 6.2.1 The annual budget documentation, as presented to Parliament or a provincial legislature, must conform to the formats as determined by the National Treasury.

6.3 Virement [Sections 43 and 76(3) of the PFMA]

- 6.3.1 For purposes of section 43(1) of the Act –
 - (a) **[personnel expenditure]** compensation of employees and transfers and subsidies to other institutions, excluding transfers and subsidies to other levels of government for purposes of paying levies and taxes imposed by legislation, may not be increased without approval of the relevant treasury;
 - (b) new transfers and subsidies to other institutions may not be introduced without the approval of the relevant treasury; **[and]**
 - (c) allocations earmarked by the relevant treasury for a specific purpose (excluding **[personnel expenditure]** compensation of employees) may not be used for other purposes, except with its approval, and
 - (d) virement of funds from compensation of employees to transfers and subsidies for the payment of severance/exit packages are excluded from the provisions of (a) and (b).

6.4 Rollovers [Sections 30(2)(g) and 31(2)(g) of the PFMA]

- 6.4.1 Funds appropriated but not spent in a particular financial year may be rolled over to a subsequent year subject to approval of the relevant treasury. Such approval will be guided by the following limitations–
- (a) **[Capital expenditure] Payments for capital assets:** Unspent funds on **[capital expenditure]** payments for capital assets may only be rolled over to finalise projects or asset acquisitions still in progress.
 - (b) **Transfers and subsidies [payments]:** Savings on transfers and subsidies **[payments]** may not be rolled over for purposes other than originally voted for.
 - (c) **Current payments:** Savings on **[personnel expenditure] compensation of employees** may not be rolled over. A maximum of five per cent of a department's **[non-personnel] payments for goods and services [current expenditure]** may be rolled over.
- 6.4.2 Requests for rollovers must be submitted to the relevant treasury on or before the last working day of April, in a format determined by the National Treasury and must include–
- (a) the purpose for which the funds were appropriated;
 - (b) the reasons why the funds were not spent;
 - (c) proposed changes to the use of the funds, if any; and;
 - (d) a disbursement schedule indicating the month(s) in which the expenditure is expected to be incurred.
- 6.4.3 Funds for a specific purpose may not be rolled over for more than one financial year, unless approved in advance by the relevant treasury.

6.5 Transfer of functions [Section 42 of the PFMA]

- 6.5.1 Where a function is to be transferred between votes 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. In the absence of agreement between the affected departments on the amount of funds to be transferred, the relevant treasury will determine the funds to be shifted.
- 6.5.2 Should the Minister of Public Service and Administration or a Premier of a province make a determination regarding the transfer of a function between departments in terms of the Public Service Act, 1994, that determination must accompany a request for the transfer of funds as per paragraph 6.5.1. Should the Minister of Public Service and Administration or a Premier approve a function transfer after the finalisation of the adjustments estimates, it must be dealt with on a recoverable basis.
- 6.5.3 Before seeking formal approval from the Minister of Public Service and Administration or the Premier of a province for any transfer of functions to another sphere of government, the transferring accounting officer must first seek the approval of the relevant treasury or treasuries on any funding arrangements.
- 6.5.4 The transfer of functions to provinces and municipalities must be dealt with in terms of the annual Division of Revenue Act and the Local Government Municipal Finance Management Act (MFMA), 2003 (Act No. 56 of 2003).

6.6 Additional funds through an adjustments budget [Sections 30(2)(b) and 31(2)(b) of the PFMA]

- 6.6.1 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.
- 6.6.2 The department requesting additional funds through an adjustments budget must submit a memorandum to the relevant treasury, the Cabinet/EXCO Secretariat and any treasury committee of the Cabinet/EXCO, on a date determined by the relevant treasury.
- 6.6.3 Where a national adjustments budget allocates funds to a province, the relevant provincial treasury must table an adjustments budget within 30 days of the tabling of the national adjustments budget, or within such longer period as the National Treasury may approve.

6.7 Definitions introduced by the new Economic Reporting Format

- 6.7.1 For purposes of ensuring alignment between the new Economic Reporting Format, the Public Finance Management Act, 1999 and the Treasury Regulations, the following terms must be used interchangeably:
- (a) Personnel expenditure referred to in the Act is the same as *compensation of employees* in the new Economic Reporting Format;
 - (b) Transfer referred to in the Act is the same as *transfers* in the new Economic Reporting Format for entities of government, but excludes public entities listed in Schedules 2, 3B and 3D to the Act;
 - (c) Transfers referred to in the Act that are made to public entities listed in Schedules 2, 3B and 3D to the Act are the same as *transfers and subsidies* in the new Economic Reporting Format; and
 - (d) Capital expenditure referred to in the Act is the same as *payments for capital assets* in the new Economic Reporting Format.

PART 4

Revenue and expenditure management

7

Revenue management

7.1 Application

- 7.1.1 This regulation applies to the identification, collection, recording and safeguarding of all revenue for which an institution is responsible.

7.2 Responsibility for revenue management

- 7.2.1 The accounting officer of an institution must manage revenue efficiently and effectively by developing and implementing appropriate processes that provide for the identification, collection, recording, reconciliation and safeguarding of information about revenue.

7.3 Services rendered by the state

- 7.3.1 The accounting officer of an institution must review, at least annually when finalising the budget, 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 a revenue fund. The accounting officer must obtain approval from the relevant treasury for the proposed tariff structure.
- 7.3.2 Information on the tariff structure must be disclosed in the annual report, including information on exemptions, discounts, free services and any other aspect of material influence on the revenue yield.

Expenditure management

8.1 Responsibility of the accounting officer [Section 76(4)(b) of the PFMA]

- 8.1.1 The accounting officer of an institution must ensure that internal procedures and internal control measures are in place for payment approval and processing. These internal controls should provide reasonable assurance that all expenditure is necessary, appropriate, paid promptly and is adequately recorded and reported.

8.2 Approval of expenditure [Section 38(1)(f) and 76(4)(b) of the PFMA]

- 8.2.1 An official of an institution may not spend or commit public money except with the approval (either in writing or by duly authorised electronic means) of the accounting officer or a properly delegated or authorised officer.
- 8.2.2 Before approving expenditure or incurring a commitment to spend, the delegated or authorised official must ensure compliance with any limitations or conditions attached to the delegation or authorisation.
- 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 an invoice or, in the case of civil claims, from the date of settlement or court judgement.

8.3 [Personnel costs] Compensation of employees [Section 76(4)(b) of the PFMA]

- 8.3.1 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.
- 8.3.2 The accounting officer of an institution must ensure that the **[personnel]** costs related to compensation of employees [of all appointees], as well as promotion and salary increases, can be met within the budgetary allocation of the institution.
- 8.3.3 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. These include –
 - (i) persons appointed permanently on the fixed establishment and employed in terms of the Public Service Act, 1994; and
 - (ii) persons appointed on contract in terms of section 8(1)(c) of the Public Service Act, 1994 and other similar legislation.
 - (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.
- 8.3.4 For all employees, the person in charge at the respective pay-points must certify on the date of payment that all persons listed on the payroll report are entitled to payment. Employees paid by cheque must sign the payroll report when collecting their cheques.

- 8.3.5 Within ten days of being certified, the payroll report must be returned to the chief financial officer. The accounting officer must ensure that all pay-point certificates have been received on a monthly basis.

8.4 Transfers [payments] and subsidies (excluding Division of Revenue grants and other allocations to municipalities) [Section 38(1)(j) of the PFMA]

- 8.4.1 An accounting officer must maintain appropriate measures to ensure that transfers and subsidies [payments] to entities are applied for their intended purposes. Such measures may include-
- (a) regular reporting procedures;
 - (b) internal and external audit requirements and, where appropriate, submission of audited statements;
 - (c) regular monitoring procedures;
 - (d) scheduled or unscheduled inspection visits or reviews of performance; and
 - (e) any other control measures deemed necessary.
- 8.4.2 An accounting officer may withhold [a] transfers and subsidies [payment] to an entity if he or she is satisfied that-
- (a) conditions attached to the transfer and subsidy [payment] have not been complied with;
 - (b) financial assistance is no longer required;
 - (c) the agreed objectives have not been attained; and
 - (d) the transfer and subsidy [payment] does not provide value for money in relation to its purpose or objectives.
- 8.4.3 Treasury Regulations 8.4.1 and 8.4.2 do not apply to transfers and subsidies to other countries, international bodies, [and] to other bodies in terms of economic and financial agreements and to levies and taxes imposed by other levels of government and which are classified as transfers and subsidies in the budgets of departments. Transfers and subsidies in respect of levies and taxes imposed by other levels and entities of government are governed by section 38(1)(e) of the Act.
- 8.4.4 Transfers and subsidies to other countries, international bodies, [and] other bodies in terms of economic and financial agreements and transfers and subsidies to other levels and entities of government for purposes of paying levies and taxes imposed by legislation are exempt from the written assurance, as required by section 38(1)(j) of the Act.

8.5 Division of Revenue Grants [Section 38(1)(i) of the PFMA]

- 8.5.1 Accounting officers of departments transferring funds to other spheres of government in terms of the annual Division of Revenue Act must comply with the provisions of that Act.

8.6 Other allocations to municipalities

- 8.6.1 A provincial accounting officer transferring a grant from the provincial revenue fund to a municipality in accordance with an assignment in terms of section 156(4) of The Constitution, 1996 (Act No. 108 of 1996) or a delegation in terms of section 238 of The Constitution, 1996 other than an agency payment in terms of section 238 of The Constitution, 1996 must comply with the relevant provisions of the annual Division of Revenue Act, the Local Government Municipal Finance Management Act (MFMA),

2003 (Act No. 56 of 2003), sections 9 and 10 of the Municipal Systems Act, 2000 (Act 32 of 2000) and other relevant legislation.

8.7 Charging of expenditure against a particular vote or main division of a vote [Section 76(2)(b) of the PFMA]

- 8.7.1 Should a dispute arise over which vote or main division of a vote should be charged with any particular expenditure, the relevant treasury must settle the dispute and determine the vote or main division against which the expenditure must be charged.

8.8 Recovery, disallowance and adjustment of payments

- 8.8.1 Amounts charged to voted funds, which are recovered in the financial year in which payment was made, shall on or before the closing of books of that financial year, be allocated to the main division that was originally debited.
- 8.8.2 Such amounts which are recovered after the closing of books of a financial year shall be paid to the relevant revenue fund, provided that such amounts have not been allocated to a clearing or suspense account during the financial year in which payment was made.

9

Unauthorised, irregular, fruitless and wasteful expenditure

9.1 General [Sections 38(1)(g) and 76(2)(e) of the PFMA]

- 9.1.1 The accounting officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.
- 9.1.2 When an official of an institution discovers unauthorised, irregular or fruitless and wasteful expenditure, that official must immediately report such expenditure to the accounting officer. In the case of a department, such expenditure must also be reported in the monthly report, as required by section 40(4)(b) of the Act. Irregular expenditure incurred by a department in contravention of tender procedures must also be brought to the notice of the relevant tender board or procurement authority, whichever applicable.
- 9.1.3 When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the Act, the accounting officer must take into account –
 - (a) the circumstances of the transgression;
 - (b) the extent of the expenditure involved; and
 - (c) the nature and seriousness of the transgression.
- 9.1.4 The recovery of losses or damages resulting from unauthorised, irregular or fruitless and wasteful expenditure must be dealt with in accordance with regulation 12.
- 9.1.5 The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.

PART 5

Asset and liability management

10

Asset management

10.1 Responsibility for asset management [Section 38(1)(d) of the PFMA]

- 10.1.1 The accounting officer of an institution must take full responsibility and ensure that proper control systems exist for assets 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.
- 10.1.2 The accounting officer must ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical and transparent use of the institution's assets.

[10.2 Disposal and letting of assets [Section 76(1)(k) of the PFMA]

- 10.2.1 Disposal of movable assets must be at market-related value or by tender or auction, whichever is most advantageous to the state, unless determined otherwise by the relevant treasury.
- 10.2.2 Any sale of immovable state property must be at market-related value, unless the relevant treasury approves otherwise.
- 10.2.3 The letting of immovable state property (excluding state housing for officials and political office bearers) must be at market-related tariffs, unless the relevant treasury approves otherwise. No state property may be let free of charge without the prior approval of the relevant treasury.
- 10.2.4 The accounting officer must review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.]

10.[3]2 Assets accruing to the state by operation of any law [Section 76(2)(i) of the PFMA]

- 10.[3]2.1 Where any money, property or right accrues to the state by operation of law (*bona vacantia*), the relevant treasury may exercise all powers, authority and prerogatives, and fulfil any obligation on behalf of the state.

Management of debtors

11.1 Application

- 11.1.1 This regulation applies to all debts accruing to an institution and includes any amount owing to or receivable by the institution, such as invoices for charges for goods or services, fees or fines outstanding.

11.2 Responsibility for the management of debtors [Section 38(1)(c)(i) and (d) of the PFMA]

- 11.2.1 The accounting officer of an institution must take effective and appropriate steps to timeously 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, where economical, to consider a legal demand and possible legal proceedings in a court of law.

11.3 Recovery of debts by instalments

- 11.3.1 Unless otherwise determined by law or agreement, debts owing to the state may, at the discretion of the accounting officer of the institution, be recovered in instalments.

11.4 Writing off of debts owing to the state [Sections 76(1)(e) and 76(4)(a) of the PFMA]

- 11.4.1 An accounting officer may only write off debts owed to the State if he or she is satisfied that –
- (a) all reasonable steps have been taken to recover the debt and the debt is irrecoverable, or,
 - (b) he or she is convinced that –
 - (i) recovery of the debt would be uneconomical;
 - (ii) recovery would cause undue hardship to the debtor or his or her dependants; or
 - (iii) it would be to the advantage of the state to effect a settlement of its claim or to waive the claim.
- 11.4.2 An accounting officer must ensure that all debts written off are done in accordance with a write off policy determined by the accounting officer.
- 11.4.3 All debts written off must be disclosed in the annual financial statements, indicating the policy in terms of which the debt was written off.

11.5 Interest payable on debts to the state [Section 80 of the PFMA]

- 11.5.1 Interest must be charged on debts to the state at the interest rate determined by the Minister of Finance in terms of section 80 of the Act.

12

Management of losses and claims

12.1 General

- 12.1.1 Subject to the provisions of this regulation, 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 an official who is liable in law and who is or was employed by an institution.
- 12.1.2 Notwithstanding paragraph 12.1.1, the accounting officer of an institution may (if deemed economical and based on a risk assessment) insure motor vehicles, including hired vehicles, or such other movable assets determined by the relevant treasury, but the insurance premium cost may not exceed R250 000 a year on that vote, unless otherwise approved by the relevant treasury.

12.2 Claims against the state through acts or omissions [Section 76(1)(h) of the PFMA]

- 12.2.1 An institution must accept liability for any loss or damage suffered by another person, which arose from an act or omission of an official as a claim against the state and does not recover compensation from an official, provided the official shall forfeit this cover if he or she, with regard to the act or omission, is liable in law and –
- (a) intentionally exceeded his or her powers;
 - (b) made use of alcohol or drugs;
 - (c) did not act in the course and scope of his or her employment;
 - (d) acted recklessly or intentionally;
 - (e) without prior consultation with the State Attorney, made an admission that was detrimental to the state; or
 - (f) failed to comply with or ignored 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, excluding damage arising from the use of a state vehicle; and
 - (g) in the case of a loss, damage or claim arising from the use of a state vehicle, the official –
 - (i) used the vehicle without authorisation;
 - (ii) did not possess a valid driver's licence or other appropriate licence;
 - (iii) did not use the vehicle in the interest of the state;
 - (iv) allowed unauthorised persons to handle the vehicle; or
 - (v) deviated materially from the official journey or route without prior authorisation;
- 12.2.2 If in doubt, the accounting officer of the institution must consult the State Attorney on questions of law on the implementation of paragraph 12.2.1.

12.2.3 Where an official has forfeited his or her cover in terms of paragraph 12.2.1, the amount paid by the institution for the loss, damage or claim arising from an act or omission must be recovered from the official concerned.

12.2.4 The State Attorney may only obligate the funds of an institution with the prior written approval of the accounting officer.

12.3 Claims by the state against other persons

12.3.1 If the state suffers a loss or damage and the other person denies liability, the accounting officer must, if deemed economical, refer the matter to the State Attorney for legal action, including the recovery of the value of the loss or damage.

12.4 Claims by officials against the state

12.4.1 If an official 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 official can prove such loss or damage.

12.5 Losses or damages through criminal acts or omissions [Section 76(1)(f) of the PFMA]

12.5.1 When it appears that the state has suffered losses or damages through criminal acts or possible criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. If liability can be determined, the accounting officer must recover the value of the loss or damage from the person responsible.

12.5.2 The accounting officer may write off losses or damages arising from criminal acts or omissions if, after a thorough investigation, it is found that the loss or damage is irrecoverable.

12.5.3 When movable assets are written off, this must be noted in the asset register.

12.6 Losses and damages through *vis major* and other unavoidable causes [Section 76(1)(e) of the PFMA]

12.6.1 The accounting officer may write off losses and damages that result from *vis major* and other unavoidable causes.

12.7 Losses or damages through acts committed or omitted by officials [Sections 76(1)(b) and 76(4)(a) of the PFMA]

12.7.1 Losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law.

12.7.2 The accounting officer must determine the amount of the loss or damage and, in writing, request that official to pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damage.

12.7.3 A claim against an official must be waived if the conditions in paragraph 12.2.1(a) to (g) are not applicable.

- 12.7.4 If in doubt, the accounting officer of the institution must consult the State Attorney on questions of law in the implementation of paragraphs 12.7.1 and 12.7.3.

Loans, guarantees, leases and other commitments

13.1 General [Section 66 of the PFMA]

- 13.1.1 The executive authority of a provincial department may not issue a guarantee, security or indemnity that may bind the provincial revenue fund, except with the prior written approval of the MEC for finance in the province.
- 13.1.2 The accounting officer of a department must ensure that no official in that department or any other person borrows money on behalf of that department or issues an unauthorised guarantee, security or indemnity. The accounting officer must ensure that appropriate misconduct or criminal proceedings are instituted against any person responsible for transgressions with regard to borrowings, guarantees, securities or indemnities.
- 13.1.3 Should the accounting officer be responsible for transgressions with regard to borrowings, guarantees, securities or indemnities, the relevant treasury must, as soon as it becomes aware of the transgression, initiate appropriate misconduct or criminal proceedings against the accounting officer.
- 13.1.4 The accounting officer must report on all known contingent liabilities of the department in its annual report.
- 13.1.5 This regulation does not preclude the use of credit cards, fleet management cards or other credit facilities repayable within 30 days from the date of statement.

13.2 Lease transactions

- [13.2.1] For the purpose of this regulation, a lease is regarded as a contract that gives the lessee (the renter) the right to the use of property, plant or equipment for a fixed period of time with a fixed schedule of payments to the lessor (the owner).
- 13.2.2 The accounting officer of an institution may, for the purpose of conducting the institution's business, enter into lease transactions provided that such transactions are limited to operating leases.
- 13.2.3 The accounting officer may under no circumstances enter into finance leases. For the purpose of this regulation, a lease is considered to be a finance lease if:
 - (a) the lease transfers ownership of the asset to the lessee by the end of the lease period;
 - (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable, so that at the inception of the lease it is reasonably certain that the option will be exercised;
 - (c) the lease term is for the economic life of the asset even if the title is not transferred;

- (d) at the inception of the lease, the present value of the minimum lease payments amount to at least 90% of the fair value of the leased asset;
- (e) the leased asset is of a specialised nature such that only the institution can use the asset without major modifications being made;
- (f) the lessor's losses associated with cancellation of the lease by the lessee is borne by the lessee; or
- (g) the leased asset cannot be easily replaced by another asset.]

13.2.1 For the purpose of this regulation, a lease is an agreement whereby the lessor conveys to the lessee in return for a payment or a series of payments the right to use an asset for an agreed period of time.

13.2.2 A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred.

13.2.3 An operating lease is a lease other than a finance lease.

13.2.4 The accounting officer of an institution may, for the purposes of conducting the institution's business, enter into lease transactions without any limitations provided that such transactions are limited to operating lease transactions.

13.2.5 With the exception of agreements concluded in terms of Treasury Regulation 16, the accounting officer of an institution may not enter into finance lease transactions.

[13.3 Provinces

13.3.1 [The MEC for finance may raise funds during a financial year for bridging purposes. All bridging finance raised during a financial year must be repaid within 30 days after the end of the financial year.]

Money and property held in trust

14.1 General

- 14.1.1 Regulation 15 is not applicable to the management of trust money.

14.2 Responsibility for trust money and property [Section 76(1)(c) of the PFMA]

- 14.2.1 For purposes of this regulation, trust money or property is money or property that does not belong to the State and that is 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.
- 14.2.2 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.
- 14.2.3 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, as agreed with the trustee. Such fees are payable from the trust account and are revenue accruing to the relevant revenue fund.

14.3 Trust money must be kept in a trust account

- 14.3.1 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 to 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) annually prepare separate annual financial statements that comply with generally accepted accounting practice.

14.4 Investment of trust money

- 14.4.1 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 be 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.
- 14.4.2 The proceeds of an investment, including interest and realised capital gains, and all money received from the realisation, sale or conversion of securities, must be treated as money of the trust on whose behalf the money was invested.

PART 6

Frameworks

15

Banking, cash management and investment

15.1 Control of the national and provincial revenue funds [Sections 11 and 21 of the PFMA]

- 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 its revenue fund always has sufficient money for appropriated expenditure and direct charges to meet the progressive cash flow requirements.
- 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 [Sections 7 and 21 of the PFMA]

- 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 Each head of a provincial treasury must nominate one bank account, which is under the control of the provincial treasury and is part of the provincial revenue fund, as the accredited account into which all transfers from national departments must be deposited.
- 15.2.4 If the accounting for a department necessitates a separate bank account, the relevant treasury may approve one sub-account 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 [Sections 13 and 22 of the PFMA]

- 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 [Section 12 of the PFMA]

- 15.4.1 The South African Revenue Service must supply the relevant treasury with an annual revenue projection no later than the tenth working day of March preceding the start of the financial year. It must also submit the actual collection for the preceding month and 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 [Sections 13 and 22 of the PFMA]

- 15.5.1 All revenue received by a department must be paid daily into its Paymaster-General account or, for amounts less than R500, as soon as practicable, but at least by the last working day of the month.
- 15.5.2 No provincial department may receive **[a transfer payment]** transfers from a national department or public entity directly; such funds must be deposited into the nominated banking account of the province as required by paragraph 15.2.3.
- 15.5.3 Money collected by a department, which is not classified as revenue, must be paid into the department's Paymaster-General account and accounted for in its ledger. This includes money received for agency services provided to another department.

15.6 Withdrawals from and investments in revenue funds [Sections 7(4) and 24(3) of the PFMA]

- 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 grants from the National Revenue Fund in accordance with the payment schedule determined in terms of the annual Division of Revenue Act.

15.8 Surrender of voted surplus funds

- 15.8.1 At the end of each financial year, and after the books of account of a department have been closed, the accounting officer must surrender to the relevant treasury any unexpended voted money, for re-depositing into the Exchequer bank account of the relevant revenue fund.

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.

15.10 Banking and cash management

15.10.1 General [Sections 7 and 21 of the PFMA]

- 15.10.1.1 The accounting 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 this regulation, sound cash management includes –
- (a) collecting revenue when it is due and banking it promptly;
 - (b) making payments, including transfers and subsidies 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 discounts 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 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;
 - (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;
 - (j) performing bank reconciliations on a daily basis to detect any unauthorised entries;
 - (k) ensuring that dishonoured warrant vouchers and cheques are followed up immediately; and
 - (l) the separation of duties to minimise the incidence of fraud.

15.10.2 Cash flow

- 15.10.2.1 The accounting officer must annually submit to the relevant treasury a breakdown of anticipated revenue and expenditure in the format determined by the National Treasury, no later than the last working day of February preceding the financial year to which it relates.
- 15.10.2.2 Provincial treasuries must submit to the National Treasury, by the 15th working day of March, projections of their expenditure, revenue and borrowings, in a format determined by the National Treasury.
- 15.10.2.3 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.

- 15.10.2.4 Should the accounting officer need 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.

15.10.3 Banking arrangements [Section 7(2) of the PFMA]

- 15.10.3.1 Institutions may not open a bank account without the written approval of the relevant treasury. Only bank accounts approved after 1 April 2001 shall be considered as valid.

- 15.10.3.2 The National Treasury will negotiate with the approved clearing banks for appropriate banking services on a regular basis for national departments and constitutional institutions.

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 an official 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 [Section 76(2)(h) of the PFMA]

- 15.12.1 Accounting officers of departments must assign authority in writing to officials to approve warrant vouchers, cheques or electronic payments.

- 15.12.2 Only authorised officials may sign hand-drawn vouchers or cheques and must initial the counterfoils.

- 15.12.3 All payments in excess of R2 000 must be effected electronically unless otherwise approved by the relevant treasury. Payments may not be split to circumvent this regulation and any non-compliance with this regulation constitutes financial misconduct.

- 15.12.4 All warrant vouchers and cheques must be crossed “NOT NEGOTIABLE” and **[should also preferably be crossed]** “NOT TRANSFERABLE” between parallel lines. The cancellation of crossings is not permitted.

- 15.12.5 When an issued warrant voucher or cheque is lost, stolen or damaged, an instruction to stop payment must immediately be issued to the responsible bank. Once confirmation has been received that the cheque was stopped, the transaction must be reversed and a new warrant voucher or cheque issued and accounted for.

- 15.12.6 All cashed warrant vouchers of national departments that have not been captured on the respective financial systems will be returned as unpaid.

16

Public private partnerships

16.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

[“affordable”, in relation to a public-private partnership (PPP) agreement, means that the financial commitments to be incurred by an institution in terms of the agreement can be met by funds –

- (a) designated within the institution’s existing budget for the institutional function to which the agreement relates; and**
- (b) destined for the institution in accordance with the relevant treasury’s future budgetary projections for the institution.**

“institution” , in relation to this Treasury Regulation, includes a department, constitutional institution and public entity listed in Schedules 3A, 3B, 3C and 3D of the Act.

“institutional function” means –

- (a) a service, task, assignment or other function that an institution performs –**
 - (i) in the public interest; or**
 - (ii) on behalf of the public service generally; or**
- (b) any part or component 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.**

“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).**

“property”, in relation to a PPP agreement, includes all movable and immovable property belonging to the state as well as intellectual property rights vested in the state;

“project officer” means the person identified by the accounting officer or accounting authority to manage the project from its inception to completion;

“public-private partnership means a commercial transaction between an institution and a private party in terms of which –

- (a) the private party either performs an institutional function on behalf of the institution for a specified or indefinite period; or acquires the use of state property for its own commercial purposes for a specified or indefinite period;**
- (b) the private party receives a benefit for performing the function or by utilising state property, 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;

“public private partnership (PPP) agreement” means an agreement approved in terms of these *Regulations*;

“value for money” means that the provision of the institutional function by a private party in terms of the public-private partnership agreement results in a net benefit to the institution, defined in terms of cost, price, quality, quantity, or risk transfer, or a combination thereof.

16.2 Exclusive competency of accounting officers and accounting authorities

16.2.1 Only an accounting officer or an accounting authority may enter into a PPP agreement on behalf of the institution.

16.3 Treasury approval

16.3.1 The accounting officer or accounting authority may not proceed with a PPP 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.

16.3.2 The relevant treasury may grant such approval only if it is satisfied that the proposed PPP will –

- (a) provide value for money;
- (b) be affordable for the institution; and
- (c) transfer appropriate technical, operational and financial risk to the private party.

16.3.3 When a provincial treasury grants such approvals, it must exercise its delegated powers subject to any limitations and qualifications in terms of the National Treasury’s delegation.

16.3.4 As soon as an institution identifies a PPP, the accounting officer or accounting authority-

- (a) must inform the relevant treasury of the expertise within that institution to proceed with a PPP;
- (b) if the relevant treasury so requests, must appoint a specialist consultant for this purpose; and
- (c) must appoint a project officer from within or outside the institution who is capable and appropriately qualified to manage the project.

16.4 Feasibility study – Treasury Approval: I

16.4.1 To determine whether a proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority must undertake a feasibility study that–

- (a) explains the strategic and operational benefits of the PPP agreement for the institution in terms of its strategic objectives and government policy;
 - (b) describes in specific terms –
 - (i) the nature of the institutional function concerned;
 - (ii) the extent to which this function, or the use of state property, both legally and by nature, can be performed by a private party in terms of a PPP agreement; and
 - (iii) what other forms of PPP agreement were considered, and how the proposed form was selected;
 - (c) assesses whether the agreement will –
 - (i) provide value for money;
 - (ii) be affordable for the institution; and
 - (iii) transfer appropriate technical, operational and financial risk to the private party.
 - (d) includes any relevant information, figures and the economic criteria used to justify these assessments; and
 - (e) 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.
- 16.4.2 An institution may not proceed with the procurement phase of a PPP without written treasury approval for the feasibility study on aspects relating to the affordability, value for money and appropriate technical, operational and financial risk transfer.
- 16.4.3 The treasury approval referred to in paragraph 16.4.2 shall be regarded as Treasury Approval: I.

16.5 Submission to obtain treasury approval

- 16.5.1 A written application for the feasibility study approval (Treasury Approval: I) must be submitted to the relevant treasury together with the feasibility study containing the following –
- (a) a brief “sector needs and options analysis” and priority ranking of the PPP being proposed on the basis of this analysis;
 - (b) demonstrated affordability, risk transfer and an initial indication of how value for money will be realised; and
 - (c) the institutional arrangements for monitoring the implementation of the PPP.
- 16.5.2 If at any time during the project, any of the assumptions in the feasibility report differ materially from the feasibility study approval, especially with regard to affordability, value for money and appropriate technical, operational and financial risk transfer, the accounting officer or accounting authority must immediately –
- (a) notify the relevant treasury of the intended revision;
 - (b) submit details of the revision to the relevant treasury;
 - (c) indicate the impact of the intended revision on the assumptions of the feasibility study relating to affordability, value for money and appropriate technical, operational and financial risk transfer; and
 - (d) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised treasury approval.

16.6 Procurement – Treasury approvals: IIA and IIB [Section 76(4) of the PFMA]

- 16.6.1** Prior to the issuing of procurement documentation to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including at least the main terms of the proposed agreement, the aspects of affordability, value for money and risk transfer.
- 16.6.2** The treasury approval referred to in paragraph 16.6.1 shall be regarded as Treasury Approval: IIA.
- 16.6.3** A PPP agreement must be procured in accordance with applicable procurement legislation.
- 16.6.4** 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.
- 16.6.5** After the evaluation of the bids but prior to entering into negotiations with any of the bidders, the institution must submit a report for approval by the relevant treasury, demonstrating the means by which affordability, quantification of value for money, appropriate technical, operational and financial risk transfer was established.
- 16.6.6** The approval referred to in paragraph 16.6.5 shall be regarded as Treasury Approval: IIB.
- 16.6.7** The procurement procedure may include –
- (a) a preference for categories of bidders, in terms of the relevant legislation, 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.

16.7 Contracting public-private partnership agreements - Treasury approval: III

- 16.7.1** After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution enters into a PPP agreement, he or she must obtain approval from the relevant treasury –
- (a) that the PPP agreement contains the affordability, value for money and appropriate technical, operational and risk transfer in regulation 16.4.2 or revised in terms of paragraph 16.5.2; and
 - (b) for a management plan that 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.
- 16.7.2** The treasury approval referred to in paragraph 16.7.1 shall be referred to as Treasury Approval: III.

16.8 Management of public-private partnership agreements

- 16.8.1** The accounting officer or accounting authority 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;
 - (d) generally overseeing the day-to-day management of the agreement; and
 - (e) reporting on the management of the agreement in the institution's annual report.
- 16.8.2** A PPP agreement does not divest the accounting officer or accounting authority of the responsibility for ensuring that the relevant institutional function is effectively and efficiently performed in the public interest.

16.9 Amendment of public-private partnership agreements

- 16.9.1** Only the accounting officer or accounting authority may enter into an agreement to amend a PPP agreement.
- 16.9.2** Written approval of the relevant treasury is required for material amendments to PPP agreements.
- 16.9.3** The relevant treasury will approve an amendment only if it is satisfied that a proper risk assessment of proposed changes have been completed and the amended PPP agreement will continue to –
- (a) provide value for money;
 - (b) be affordable for the institution; and
 - (c) transfer appropriate technical, operational and financial risk to the private party.
- 16.9.4** The accounting officer or accounting authority must substantially follow the procedure prescribed by clauses 16.3 and 16.5 for obtaining treasury approval.

16.10 Certain agreements not binding on the state

- 16.10.1** A PPP agreement or an agreement amending a PPP agreement does not bind the state if the agreement was entered into on behalf of an institution –
- (a) by a person other than the accounting officer or accounting authority of the institution; or
 - (b) without the approval of the relevant treasury.

16.11 Exemptions

- 16.11.1** The National Treasury may under certain terms and conditions and upon written application from an institution, exempt that institution from the application of this regulation or from any commercial transaction that falls within the definition of “public private partnership”.

16.12 General

16.12.1 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 and must be dealt with as a procurement transaction.]

“affordability” means that the financial commitments to be incurred by an institution in terms of the PPP agreement can be met by funds –

- (a) designated within the institution’s existing budget for the institutional function to which the agreement relates; and/or
- (b) destined for the institution in accordance with the relevant treasury’s future budgetary projections for the institution;

“institution” means a department, a constitutional institution, a public entity listed, or required to be listed in Schedules 3A, 3B, 3C and 3D to the Act, or any subsidiary of any such public entity.

“institutional function” means –

- (a) a service, task, assignment or other function that an institution is entitled or obliged to perform –
 - (i) in the public interest; or
 - (ii) on behalf of the public service generally; or
- (b) any part or component of or any service, task, assignment or other function performed or to be performed in support of such a service, task, assignment or other function;

“private party” means a party to a PPP agreement, other than –

- (a) an institution to which the Act applies;
- (b) a municipality or a municipal entity under the ownership control of one or more municipalities; or
- (c) the accounting officer, accounting authority or other person or body acting on behalf of an institution, municipality or municipal entity referred to in paragraph (a) or (b);

“project officer” means a person identified by the accounting officer or accounting authority of an institution, who is capable of managing and is appropriately qualified to manage a PPP to which that institution is party from its inception to its expiry or termination;

“public private partnership” or “PPP” means a commercial transaction between an institution and a private party in terms of which the private party –

- (a) performs an institutional function on behalf of the institution; and / or
- (b) acquires the use of state property for its own commercial purposes; and
- (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property; and
- (d) receives a benefit for performing the institutional function or from utilising the state property, either by way of:
 - (i) consideration to be paid by the institution which derives from a revenue fund or, where the institution is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or
 - (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or

(iii) a combination of such consideration and such charges or fees;

“preferred bidder” means the bidder, including any bidding consortium, to be appointed as preferred bidder in terms of regulation 16.5.4;

“PPP agreement” means a written contract recording the terms of a PPP concluded between an institution and a private party;

“relevant treasury” means the National Treasury unless delegated in terms of section 10(1)(b) of the Act;

“state property” includes all movable and immovable property belonging to the state as well as intellectual property rights vested in the state;

“transaction advisor” means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement; and

“value for money” means that the provision of the institutional function or the use of state property by a private party in terms of the PPP agreement results in a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.

16.2 Exclusive competency of accounting officers and accounting authorities

16.2.1 Only the accounting officer or the accounting authority of an institution may enter into a PPP agreement on behalf of that institution.

16.3 Project inception

16.3.1 As soon as the institution identifies a project that may be concluded as a PPP, the accounting officer or accounting authority must in writing-

- (a) register the PPP with the relevant treasury;
- (b) inform the relevant treasury of the expertise within that institution to proceed with a PPP;
- (c) appoint a project officer from within or outside the institution; and
- (d) appoint a transaction advisor if the relevant treasury so requests.

16.4 Feasibility study – Treasury Approval: I

16.4.1 To determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that-

- (a) explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;
- (b) describes in specific terms –
 - (i) in the case of a PPP involving the performance of an institutional function, the nature of the institutional function concerned and the extent to which this

institutional function, both legally and by nature, may be performed by a private party; and

(ii) in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;

(c) in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;

(d) sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;

(e) demonstrates the anticipated value for money to be achieved by the PPP; and

(f) explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.

16.4.2 An institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.

16.4.3 The treasury approval referred to in regulation 16.4.2 shall be regarded as Treasury Approval: I.

16.4.4 If at any time after Treasury Approval: I has been granted in respect of the feasibility study of a PPP, but before the grant of Treasury Approval: III in respect of the PPP agreement recording that PPP, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the accounting officer or accounting authority of the institution must immediately –

(a) provide the relevant treasury with details of the intended revision, including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and

(b) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised Treasury Approval: I.

16.5 Procurement – Treasury approvals IIA and IIB

16.5.1 Prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including the draft PPP agreement.

16.5.2 The treasury approval referred to in regulation 16.5.1 shall be regarded as Treasury Approval: IIA.

16.5.3 The procurement procedure –

(a) must be in accordance with a system that is fair, equitable, transparent, competitive and cost-effective; and

(b) must include a preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.

16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk

transfer were applied in the evaluation of the bids, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury.

16.5.5 The treasury approval referred to in regulation 16.5.4 shall be regarded as Treasury Approval: IIB.

16.6 Contracting PPP agreements - Treasury Approval: III

16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury –

- (a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of regulation 16.4.2 or as revised in terms of regulation 16.4.4;
- (b) for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP; and
- (c) that a satisfactory due diligence including a legal due diligence has been completed in respect of the accounting officer or accounting authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement.

16.6.2 The treasury approval referred to in regulation 16.6.1 shall be referred to as Treasury Approval: III.

16.7 Management of PPP agreements

16.7.1 The accounting officer or accounting authority of the institution that is party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in Treasury Approval: III for –

- (a) measuring the outputs of the PPP agreement;
- (b) monitoring the implementation of the PPP agreement and performances under the PPP agreement;
- (c) liaising with the private party;
- (d) resolving disputes and differences with the private party;
- (e) generally overseeing the day-to-day management of the PPP agreement; and
- (f) reporting on the PPP agreement in the institution's annual report.

16.7.2 A PPP agreement involving the performance of an institutional function does not divest the accounting officer or accounting authority of the institution concerned of the responsibility for ensuring that such institutional function is effectively and efficiently performed in the public interest or on behalf of the public service.

16.7.3 A PPP agreement involving the use of state property by a private party does not divest the accounting officer or accounting authority of the institution concerned of the responsibility for ensuring that such state property is appropriately protected against forfeiture, theft, loss, wastage and misuse.

16.8 Amendment and variation of PPP agreements

16.8.1 The prior written approval of the relevant treasury is required for any material amendments to a PPP agreement including any material variations to the outputs therein, or any waivers contemplated or provided for in the PPP agreement.

16.8.2 The relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide –

(a) value for money;

(b) affordability; and

(c) substantial technical, operational and financial risk transfer to the private party.

16.8.3 The accounting officer or accounting authority must substantially follow the procedure prescribed by regulations 16.4 and 16.6 for obtaining such treasury approval.

16.9 Agreements binding on the state

16.9.1 A PPP agreement or an agreement amending a PPP agreement, binds the state only if the agreement was entered into on behalf of an institution –

(a) by the accounting officer or accounting authority of that institution; and

(b) if all treasury approvals required in terms of this regulation 16 have been granted by the relevant treasury in respect of the PPP.

16.10 Exemptions

16.10.1 The relevant treasury may, subject to any terms and conditions that it considers appropriate and upon written application from an institution, exempt that institution whether in relation to a specific PPP or in general, from complying with any or all of the provisions of this regulation 16.

Supply Chain Management

16A1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –

“institution” means a department, constitutional institution or public entity listed in Schedule 3A and 3C of the Act; and

“official” means a person in the employ of a department, constitutional institution or public entity listed in Schedule 3A and 3C of the Act.

16A2 Application

16A2.1 This framework applies to all –

- (a) departments;
- (b) constitutional institutions; and
- (c) public entities listed in Schedules 3A and 3C to the Act.

16A3 Supply chain management system

16A3.1 The accounting officer or accounting authority of an institution to which these regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for –

- (a) the acquisition of goods and services; and
- (b) the disposal and letting of state assets, including the disposal of goods no longer required.

16A3.2 A supply chain management system referred to in paragraph 16A.3.1 must –

- (a) be fair, equitable, transparent, competitive and cost effective;
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (d) provide for at least the following: –
 - (i) demand management;
 - (ii) acquisition management;
 - (iii) logistics management;
 - (iv) disposal management;
 - (v) risk management; and
 - (vi) regular assessment of supply chain performance.

16A4 Establishment of supply chain management units

16A4.1 The accounting officer or accounting authority must establish a separate supply chain management unit within the office of that institution's chief financial officer, to implement the institution's supply chain management system.

16A5 Training of supply chain management officials

16A5.1 The accounting officer or accounting authority must ensure that officials implementing the institution's supply chain management system are trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by the National Treasury.

16A6 Procurement of goods and services

16A6.1 Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury.

16A6.2 A supply chain management system must, in the case of procurement through a bidding process, provide for –

- (a) the adjudication of bids through a bid adjudication committee;
- (b) the establishment, composition and functioning of bid specification, evaluation and adjudication committees;
- (c) the selection of bid adjudication committee members;
- (d) bidding procedures; and
- (e) the approval of bid evaluation and/or adjudication committee recommendations.

16A6.3 The accounting officer or accounting authority must ensure that –

(a) bid documentation and the general conditions of a contract are in accordance with –

- (i) the instructions of the National Treasury; or
- (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;

(b) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(c) bids are advertised in at least the *Government Tender Bulletin* for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;

(d) awards are published in the *Government Tender Bulletin* and other media by means of which the bids were advertised;

(e) contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act;

- (f) Treasury Regulation 16 is complied with when goods or services are procured through public private partnerships or as part of a public private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

16.A6.5 The accounting officer or accounting authority may opt to participate in transversal term contracts facilitated by the relevant treasury. Should the accounting officer or accounting authority opt to participate in a transversal contract facilitated by the relevant treasury, the accounting officer or accounting authority may not solicit bids for the same or similar product or service during the tenure of the transversal term contract.

16A6.6 The accounting officer or accounting authority may, on behalf the department, constitutional institution or public entity, participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors.

16A7 Disposal and letting of state assets

16A7.1 Disposal of movable assets must be at market-related value or by way of price quotations, competitive bids or auction, whichever is most advantageous to the state, unless determined otherwise by the relevant treasury.

16A7.2 Notwithstanding the provisions of paragraph 16A7.1, accounting officers and accounting authorities may transfer movable assets free of charge to other departments, constitutional institutions or public entities by means of formal vouchers.

16A7.3 Any sale of immovable state property must be at market-related value, unless the relevant treasury approves otherwise.

16A7.4 The letting of immovable state property (excluding state housing for officials and political office bearers) must be at market-related tariffs, unless the relevant treasury approves otherwise. No state property may be let free of charge without the prior approval of the relevant treasury.

16A7.5 The accounting officer or accounting authority must review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.

16A7.6 The accounting officer or accounting authority must, when disposing of firearms, obtain the approval of the National Conventional Arms Control Committee for any sale or donation of firearms to any person or institution within or outside the Republic.

16A7.7 The accounting officer or accounting authority must, when disposing of computer equipment, firstly approach any state institution involved in education and/or training to determine whether such an institution requires such equipment. In the event of the computer equipment being required by such a state institution, the accounting officer or accounting authority may transfer such equipment free of charge to the identified institution.

16A8 Compliance with ethical standards

16A8.1 All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote –

- (a) mutual trust and respect; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

16A8.2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.

16A8.3 A supply chain management official or other role player –

- (a) must recognise and disclose any conflict of interest that may arise;
- (b) must treat all suppliers and potential suppliers equitably;
- (c) may not use their position for private gain or to improperly benefit another person;
- (d) must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;
- (e) must be scrupulous in their use of public property; and
- (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.

16A8.4 If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –

- (a) disclose that interest; and
- (b) withdraw from participating in any manner whatsoever in the process relating to that contract.

16A8.5 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system must immediately report the breach or failure to the accounting officer or accounting authority, in writing.

16A9 Avoiding abuse of supply chain management system

16A9.1 The accounting officer or accounting authority must –

- (a) take all reasonable steps to prevent abuse of the supply chain management system;
- (b) investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified –
 - (i) take steps against such official or other role player and inform the relevant treasury of such steps; and

(ii) report any conduct that may constitute an offence to the South African Police Service;

(c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, nor any of its directors, are listed as companies or persons prohibited from doing business with the public sector;

(d) reject any bid from a supplier who fails to provide written proof from the South African Revenue Service that that supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations;

(e) reject a proposal for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract; or

(f) cancel a contract awarded to a supplier of goods or services –

(i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or

(ii) if any official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of that contract that benefited that supplier.

16A9.2 The accounting officer or accounting authority –

(a) may disregard the bid of any bidder if that bidder, or any of its directors –

(i) have abused the institution's supply chain management system

(ii) have committed fraud or any other improper conduct in relation to such system; or

(iii) have failed to perform on any previous contract; and

(b) must inform the relevant treasury of any action taken in terms of paragraph (a).

16A9.3 The National Treasury and each provincial treasury must establish a mechanism:-

(a) to receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards; and

(b) to make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of criminal steps to be taken in the case of corruption, fraud or other criminal offences.

16A10 National Industrial Participation Program

16A10.1 An accounting officer or accounting authority must obtain clearance for a recommended bidder from the Department of Trade and Industry, in respect of contracts which are subject to the National Industrial Participation Program of that Department.

16A11 Reporting of supply chain management information

16A11.1 The accounting officer or accounting authority must submit to the relevant treasury such supply chain management information as that treasury may require.

16A11.2 A provincial treasury must submit to the National Treasury such supply chain management information as the National Treasury may require.

16A11.3 Information referred to in paragraphs 16A11.1 and 16A11.2 must be submitted to the relevant treasury in such format and at such intervals as that treasury may require.

16A12 Interim arrangements

16A12.1 If a department lacks the capacity to fully comply with these regulations, that department may continue to make use of existing procurement processes through the relevant Tender Boards or other provincial procurement authorities (whichever applicable), subject to any instructions of the relevant treasury.

16.A12.2 If a constitutional institution or public entity lacks the capacity to fully comply with these regulations, that constitutional institution or public entity may, until 31 March 2005, continue to utilise their existing procurement procedures, provided that their existing procurement procedures are consistent with the contents of practice notes issued by the National Treasury.

PART 7

Accounting and reporting requirements

17

Basic accounting records and related issues

17.1 Use of clearing and suspense accounts [Section 40(1)(a) of the PFMA]

- 17.1.1 All the transactions of an institution 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 revenue and expenditure transactions in a clearing or suspense account because the classification has not been resolved, the accounting officer must ensure that –
 - (a) the sources of the transactions are readily identifiable;
 - (b) amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
 - (c) monthly reconciliation's are performed to confirm the balance of each account; and
 - (d) reports are provided to the accounting officer about uncleared items on a monthly basis.
- 17.1.3 In each month's section 40(4) report, the accounting officer must certify that the forecast/projection for the remainder of the financial year adequately makes provision for all amounts not yet cleared from clearing and suspense accounts.

17.2 Availability of financial information [Section 40(1)(a) of the PFMA]

- 17.2.1 Accounting officers of institutions must, subject to the provisions of the relevant national or provincial legislation, retain all financial information in its original form, as follows –
 - (a) information relating to one financial year – for one year after the audit report for the financial year in question has been tabled in Parliament or the provincial legislature; 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	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	
Supplementary accounting records, including, for example, cash register strips, bank statements and time sheets	5
General and incidental source documents not included above, including stock issue and receivable notes, copies of official orders (other than copies for substantiating payments or for unperformed contracts), bank deposit books and post registers	5

- 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 may not amend existing or institute new computerised systems that will affect financial administration without the prior written approval of the National Treasury.

18

Monthly and annual reports

18.1 Monthly reports [Sections 32(2) and 40(4)(b) and (c) of the PFMA]

- 18.1.1 In addition to the reporting requirements of sections 40(4)(b) and (c) of the Act, the accounting officer must also comply with the reporting requirements of the annual Division of Revenue Act.
- 18.1.2 A provincial treasury must submit a statement to the National Treasury on actual revenue and expenditure with regard to its revenue fund before the 22nd day of each month in the format determined by the National Treasury. Such a statement must include a certificate to the effect that the information supplied has been verified by the head official of the provincial treasury. The information supplied must be based on information submitted to the provincial treasury by provincial accounting officers in terms of section 40(4)(c) of the Act.

18.2 Annual financial statements [Section 40(1)(b) of the PFMA]

[For the financial year ending 31 March 2003, the] In the absence of any implementation dates set for the standards of generally recognised accounting practice issued by the Accounting Standards Board, the following reporting standards comprise generally recognised accounting practice and must be adhered to for the preparation of annual financial statements, unless otherwise approved by the National Treasury:

Reporting entity	Generally recognised accounting practice
National and provincial revenue funds	Annual financial statements must consist of – (a) a statement of liabilities and financially related assets; <u>(b) a balance sheet (statement of financial position);</u> [(b)]<u>(c) an income statement (statement of financial performance);</u> [(c)]<u>(d) a cash flow statement;</u> [(d)]<u>(e) notes to the annual financial statements;</u> [(e)]<u>(f) a report on the financial position of and performance by the Treasury; and</u> [(f)]<u>(g) such other statements as may be determined by the [Accounting Standards Board] National Treasury.</u> The annual financial statements must be prepared on a modified cash basis in accordance with the formats prescribed by the National Treasury 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.
Departments	Annual financial statements must consist of – (a) <u>a balance sheet (statement of financial position);</u> (b) a statement of changes in [equity] <u>net assets;</u> (c) <u>an income statement (statement of financial performance) ;</u> (d) a cash flow statement; (e) [notes to the annual financial statements] <u>an appropriation statement;</u> [and]

	(f) [such other statements as may be determined by the Accounting Standards Board] <u>notes to the appropriation statement and annual financial statements; and</u> (g) <u>such other statements as may be determined by the National Treasury.</u> The statements must be prepared on a modified cash basis in accordance with the formats prescribed by the National Treasury 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 [institution] <u>department.</u>
Trading entities Constitutional institutions	Annual financial statements must consist of – (a) a <u>balance sheet</u> (statement of financial position); (b) an <u>income statement</u> (statement of financial performance); (c) a cash flow statement; (d) notes to the annual financial statements; and (e) such other statements as may be determined by the [Accounting Standards Board] <u>National Treasury.</u> The annual financial statements must be accompanied by the audit opinion of the Auditor-General. The annual financial statements must conform with <i>generally accepted accounting practice</i>. These statements must fairly represent the financial position at the end of the financial year concerned and cash flows of the institution for the year then ended. Should these statements materially depart from the Statements of GAAP, the financial statements must provide a disclosure of the departure, the particulars thereof, the reasons therefore and the <u>financial</u> effect of such a departure on the financial statements. 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.

18.3 Contents of annual reports [for the financial year ending 31 March 2003] [Section 40(1)(d) of the PFMA]

- 18.3.1 In preparing the annual report of an institution, the accounting officer must –
- in the case of a department or trading entity, comply with the requirements prescribed in Chapter 1, Part III J of the *Public Service Regulations*, 2001;
 - 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;
 - include information on transfers and subsidies **[payments]** per organisation for the entire financial year as well as a report on compliance with section 38(1)(j) of the Act;
 - include all information required in terms of the annual Division of Revenue Act;
 - include any additional information required by Parliament or the provincial legislature;
 - 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 rand), performance information on the institution's use of the assistance, and any pending applications for assistance;
 - a report from the audit committee as required by paragraph 3.1.13; and

- (h) include information on the management of PPP agreements as required by paragraph **[16.8.1(e)]** 16.7.1(f).

18.4 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 or reporting to the department or responsible executive authority, 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 or executive authority and the management of the trading and/or public entity.

PART 8

Miscellaneous

19

Trading entities

19.1 Definitions [Section 76(4)(b) of the PFMA]

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“head of the trading entity” refers to either –

- (a) the accounting officer appointed in terms of section 36(3)(b) of the Act; or
- (b) an official assigned to head the trading entity in terms of section 44(1)(a) of the Act.

19.2 General

- 19.2.1 For purposes of this regulation, a trading entity is regarded as an entity operating within the administration of a department. All obligations on departments in these regulations apply to trading entities, unless the context indicates otherwise.
- 19.2.2 The accounting officer of the department operating a trading entity must ensure that the head of the trading entity complies with the Act and these *Treasury Regulations*.
- 19.2.3 Trading entities allowed to open bank accounts may not borrow for bridging purposes and may not run overdrafts on their banking accounts.

19.3 Policy and reporting framework

- 19.3.1 The accounting officer of a department operating a trading entity must formulate a policy and reporting framework for the head of the trading entity.
- 19.3.2 The head of the trading entity is accountable to the accounting officer of the department operating that trading entity and must forward all reports or approvals required in the Act via the accounting officer of the department.

19.4 Establishment

- 19.4.1 Provincial treasuries may only establish a trading entity after consultation with the National Treasury.

19.5 Capital requirements and user charges

- 19.5.1 The 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.
- 19.5.2 In determining charges for goods or services, the head of the trading entity must aim to recover the full cost of providing the goods or services, unless the relevant treasury approves lower charges.

- 19.5.3 The head must review rates for user charges at least annually before the budget, and any tariff increases are subject to approval by the relevant treasury.

19.6 Disposal of assets

- 19.6.1 When assets are disposed of other than in the ordinary course of the business of the trading entity, the relevant treasury must approve the transaction.

19.7 Surrender of surplus funds

- 19.7.1 An accounting officer of a department operating a trading entity 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 relevant treasury may apply such surplus to reduce any proposed allocation to the trading entity, or require that all or part of it be re-deposited in the Exchequer bank account.
- 19.7.2 Where a trading entity suffers a deficit in trading, the accounting officer of the department operating the trading entity must investigate whether –
- (a) the head of the trading entity reported any foreseeable potential overexpenditure in the monthly reports;
 - (b) appropriate steps were taken to address the deficit; and
 - (c) financial misconduct sanctions should be instituted if paragraphs (a) and (b) were not adhered to.
- 19.7.3 In the event of a trading entity incurring a deficit, the accounting officer of the department controlling the trading entity must disclose the financial impact of such a deficit on the department in its annual report.

19.8 Monthly and annual reporting

- 19.8.1 The accounting officer of a department controlling a trading entity must provide the monthly information as required by section 40(4)(b) and (c) of the Act in respect of such a trading entity in the monthly report of the department
- 19.8.2 In the event of the accounting officer of the trading entity not being the accounting officer of the department, then such an accounting officer must provide the information required in Treasury Regulation 19.8.1 to the accounting officer of the department for inclusion in the department's monthly report.
- 19.8.3 The relevant treasury may direct that the annual report and financial statements of the trading entity be incorporated into those of the department responsible for that trading entity.
- 19.8.4 The annual financial statements in respect of a trading entity must be compiled in accordance with paragraph 18.2.

19.9 Closure of a trading entity

- 19.9.1 Upon closure of a trading entity, all assets of the trading entity shall be transferred to the controlling department and taken on record.

20

Commissions and Committees of Inquiry

20.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“commission” means a commission of inquiry appointed by the President or the Premier of a province 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 that was established by an Act of Parliament and that receives its funds wholly, or in part, from the National Revenue Fund, where such a person represents the department or body where he or she is employed as a member of a commission or committee.

20.2 Remuneration of members

- 20.2.1 An official member may not receive additional remuneration. Subsistence and other allowances may be paid to the official member by the institution that employs the official member in accordance with his or her conditions of service.
- 20.2.2 A non-official member must be remunerated according to scales approved by the National Treasury.
- 20.2.3 Should the accounting officer deem it necessary, he or she can, in consultation with the executive authority, determine other remuneration, provided that –
 - (a) the terms of reference are properly defined in terms of time and cost; and
 - (b) if applicable, the remuneration is considered taking into account the tariffs as determined by the institute that regulates the profession that the non-official member belongs to.
- 20.2.4 The remuneration of all members of a commission or committee must be disclosed as notes to the financial statements of the institution.

20.3 Services rendered by members during private time

- 20.3.1 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 of 1994 must be complied with.

21

Gifts, donations and sponsorships

21.1 Granting of gifts, donations and sponsorships by the state [Section 76(1)(l) of the PFMA]

- 21.1.1 The accounting officer may approve gifts, donations and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill.

21.2 Acceptance of gifts, donations and sponsorships to the state

- 21.2.1 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind.
- 21.2.2 All cash gifts, donations or sponsorships must be paid into the relevant revenue fund, except those donations received in terms of paragraph 21.2.5.
- 21.2.3 Where it is not apparent for what purpose a gift, donation or sponsorship should be applied, the relevant executive authority may decide how it must be utilised.
- 21.2.4 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.
- 21.2.5 Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

21.3 Gifts or donations of immovable property by or to the state [Sections 76(1)(k) and (l) of the PFMA]

- 21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.
- 21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

21.4 Identity of donors and sponsors

- 21.4.1 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, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.

- 21.4.2 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

Payments and remissions as an act of grace

22.1 General [Section 76(1)(j) of the PFMA]

- 22.1.1 Where no legislative authority exists, the accounting officer may approve as an act of grace or favour –
 - (a) the remission of money due to a revenue fund; and
 - (b) payments from a vote.
- 22.1.2 Where such payments from a vote exceed R100 000, Parliament or provincial legislature approval must be sought by including the item separately in the appropriation bill.
- 22.1.3 Where there is doubt as to whether an amount may be written off in terms of clause 11.4 of these *Regulations*, or should be treated as a remission as an act of grace, the relevant treasury must make the decision.
- 22.1.4 All remissions or payments made as an act of grace during the financial year must be disclosed as a note to the annual financial statements of the institution.

Government payroll deductions

23.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“Accountant-General” means the officer of the National Treasury designated as the Accountant-General;

“basic salary” means the annual notch that an official is employed on divided by 12. It excludes additional remuneration from overtime or other allowances;

“benefit deduction” means a deduction on Persal against an official’s salary for a debt arising from employment benefits, including home owner’s allowances and the motor finance scheme for senior officials;

“collective agreement deduction” means a deduction on Persal against an official’s salary arising from a collective agreement between the state and a union registered with the Public Service Coordinating Bargaining Council or similar body, in accordance with applicable law;

“debt” means an amount of money owed and already payable by an official to any person and for the purposes of these regulations, includes insurance premiums deducted in terms of policies with long and short-term insurers;

“deduction code” means a code issued by the Accountant-General to enable a person to deduct money from an individual paid via the Persal system;

“Director-General” means the Director-General: National Treasury;

“discretionary deduction” means a deduction on Persal against an official’s salary, other than benefit, collective agreement, state or statutory deductions;

“official” means a person in the employ of a department or a person in the employ of a constitutional institution who receives his or her salary via Persal, but excludes persons employed in terms of section 1 of the Magistrates Act, 1993 (Act No. 90 of 1993) and section 3 of the Intelligence Services Act, [1994]2002 (Act No. [38 of 1994]65 of 2002);

“Persal” means the personnel salary system of national and provincial government, and includes the Persol system;

“person” depending on the context, includes reference to the state or any other legal entity;

“state deduction” means a deduction on Persal against an official’s salary for a debt to a department that is subject to section 34 of the Basic Conditions of Employment Act (Act 75 of 1997);

“statutory deduction” means a deduction on Persal against an official’s salary, which is required or permitted in terms of a law, court order or arbitration award.

23.2 Persal deductions

- 23.2.1 No official or employee of an entity contracted to operate Persal may, whether for paying a debt or any other purpose, process a discretionary deduction except in accordance with the provisions of these regulations and the agreement as contemplated in paragraph 23.3.
- 23.2.2 Before a benefit, collective agreement, state or statutory deduction is processed on Persal, the accounting officer must certify that the deduction is due and that no portion of it is a discretionary deduction.
- 23.2.3 Where such certification is for an emoluments attachment order issued against an official in terms of section 65J of the Magistrates' Court Act (Act 32 of 1944), the accounting officer must be satisfied that –
 - (a) the documentation presented by the judgement creditor or his or her attorney *inter alia* reflects, as contemplated in this Act –
 - (i) that the official has given written consent to the issuing of the order or that a court has authorised it (on application or otherwise), and that this authorisation has not been suspended; or
 - (ii) that the official has first been sent a registered letter advising him or her of the amount of the judgement debt and costs, and warning that an emoluments attachment order will be issued if this amount is not paid within ten days of the date of its posting;
 - (b) after the deduction, the official will have sufficient means for maintenance for him or herself and any dependants.
- 23.2.4 Should the deduction not leave the official with sufficient means for maintenance or for that of his or her dependants, the accounting officer must advise the official of his or her right to approach the court to either rescind the order or amend it to affect only the balance of the salary after provision for such maintenance.

23.3 Deduction codes

- 23.3.1 Any person may apply for a deduction code for a discretionary deduction, subject to the requirements as laid down by the Accountant-General.
- 23.3.2 Only the Accountant-General may approve the issuing of deduction codes, in terms of an agreement between the Accountant-General and a person qualifying for such a code.
- 23.3.3 A person applying for a deduction code must certify in the application that –
 - (a) the code is required by –
 - (i) a department;
 - (ii) an insurance company (for insurance deduction codes) approved by the Financial Services Board;
 - (iii) a company (for loan deduction codes) that is registered under the Banks Act (Act 94 of 1990) or with the Micro Finance Regulatory Council (MFRC);
 - (iv) a public higher education institution; or
 - (v) a private higher education institution approved by the national Department of Education.
 - (b) third parties, including brokers, will not be allowed access to the code;
 - (c) the person consents to –
 - (i) entering into an agreement with the Accountant-General, which is subject to annual review;
 - (ii) the oversight of the Financial Services Board and the National Treasury to monitor compliance with the agreement and this regulation; and

- (iii) an audit, at own expense, by parties determined by the Accountant-General;
 - (d) the person is in good standing with the South African Revenue Services and will annually provide the Accountant-General with proof of such good standing.
- 23.3.4 The Accountant-General may levy a fee of up to 5 per cent of deductions for emolument attachment orders, except orders specifically for child maintenance.
- 23.3.5 The National Treasury may, for a discretionary loan deduction, determine the maximum loan period, the maximum loan amount and the interest rate (this will form part of the agreement with the Accountant-General) –
 - (a) for loans over R10 000, the Usury Act limit is the maximum, all inclusive interest rate;
 - (b) for loans below R10 000, the maximum is 27 per cent plus an administrative cost subject to a limit set out in the agreement with the Accountant-General.
- 23.3.6 Discretionary deductions may not exceed 40 per cent of the official's basic salary, provided that –
 - (a) deductions for insurance premiums do not exceed 15 per cent;
 - (b) other discretionary deductions do not exceed 25 per cent; and
 - (c) the minimum take-home pay is as specified in the agreement with the Accountant-General.
- 23.3.7 Notwithstanding the provisions of paragraph 23.3.6, discretionary deductions in excess of the limits prescribed by that paragraph may be deducted; provided that the Accountant-General is satisfied that not allowing such deductions will substantially prejudice the interests of the employee and that such deductions shall be limited in duration to a period as determined by the Accountant-General.
- 23.3.8 The Minister of Finance may determine the future of the discretionary deductions system and the number of deduction codes on the Persal system.
- 23.3.9 Insurance companies to whom deduction codes are allocated may vary premiums periodically, provided that the annual increase does not exceed 15 per cent of the premium or ten rand (R10), whichever is greater.

23.4 Contravention of regulations and penalties

- 23.4.1 Any serious or persistent material non-compliance with this regulation or the terms of the agreement with the Accountant-General constitutes misconduct.
- 23.4.2 It is a serious contravention for any person to knowingly exceed the deduction limits described above.
- 23.4.3 The Accountant-General may penalise a person for contravening this regulation by–
 - (a) withdrawing or suspending the use of a deduction code;
 - (b) refusing access to the Persal system for a specific period;
 - (c) publishing the identity of the person and the details of the contravention;
 - (d) laying criminal charges; and
 - (e) if the person is an official, direct that the contravention be dealt with in terms of the Act.
- 23.4.4 Any person aggrieved by a decision of or penalty imposed by the Accountant-General may appeal to the Minister of Finance, whose decision will be final.

[23.5 Transitional arrangements

23.5.1 As from 31 May 2002, all deductions that do not comply with these regulations will be terminated, in the following order –

- (a) deductions to parties that do not have access to Persal codes;**
- (b) loan deductions that do not meet the interest rate and pricing limits set out in this regulation;**
- (c) deductions where payments in a specific category exceed the limits outlined above; and**
- (d) a “last in-first out” basis will be used, unless determined otherwise by the Accountant-General.]**

PART 9

Public entities

24

General definitions

24.1 General definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“designated accounting officer” means the accounting officer of a designated department;

“designated department”, in relation to a public entity, means a department designated by its executive authority as the department responsible for the public entity;

“employee” means a person in the employ of a public entity;

[“finance lease” refers to a contract that transfers the risks, rewards, rights and obligations incident to ownership to the lessee and is recorded as a purchase of equipment by means of long-term borrowing;]

[“operating lease” refers to a contract where the lessor retains the risks and obligations incident to ownership and payments by the lessee are recorded as rental expenses.]

“remuneration” means any consideration or benefit derived directly or indirectly by the following persons for services provided in their capacity as:

- (a) members of the accounting authority;
- (b) the chief executive officer or the person in charge of the public entity;
- (c) the chief financial officer; or
- (d) persons serving on the senior management of the public entity or in the entity under the public entity’s ownership control.

“senior management” refers to the level of management that is directly accountable to the chief executive officer or to the person in charge of the public entity.

Application and listing

25.1 Application [Sections 47 and 76(4) of the PFMA]

- 25.1.1 These regulations apply to all public entities listed in Schedule 2 or 3 of the Act, unless the context indicates otherwise.
- 25.1.2 Public entities that should have been listed in terms of the Act but which are not listed, must deposit all money received into the relevant revenue fund.
- 25.1.3 Public entities must submit all information required by the National Treasury in terms of the Act and these regulations to the Registrar of Public Entities in the National Treasury.

25.2 Listing [Section 47(2) of the PFMA]

- 25.2.1 An accounting authority of a public entity not listed in terms of the Act must submit the following information to the executive authority and the Registrar of Public Entities in support of its application for listing –
 - (a) name of the public entity;
 - (b) its main function;
 - (c) executive authority responsible for the public entity;
 - (d) legislation in terms of which the entity was established;
 - (e) dates of its incorporation and financial year end;
 - (f) names of members of the board or body controlling the public entity;
 - (g) its registered address and telephone numbers;
 - (h) name of the chief executive officer;
 - (i) name of the chief financial officer;
 - (j) name of the company secretary;
 - (k) authority responsible for appointing the chief executive officer;
 - (l) authority responsible for appointing the board of directors or controlling body;
 - (m) subsidiaries under the ownership control of the entity;
 - (n) latest audited financial statements;
 - (o) amount of budgetary transfers received over the past three financial years; and
 - (p) most recent corporate/strategic plan of the public entity.

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Responsibilities of designated accounting officers

26.1 Responsibilities over Schedule 3A and 3C public entities

- 26.1.1 The designated accounting officer must ensure that within thirty days of the end of each quarter, the public entity submits information on its actual revenue and expenditure up to the end of that quarter as well as a projection of expected expenditure and revenue for the remainder of the current financial year. The information on actual revenue and expenditure shall be determined after taking accruals into account.
- 26.1.2 The accounting authority must quarterly report to the executive authority through the designated accounting officer on the extent of compliance on the Public Finance Management Act, 1999 and regulations. Any non-compliance must be reported together with reasons for the non-compliance.
- 26.1.3 The designated accounting officer may, after consultation with the relevant public entity, approve the sharing of services where it is economical, including the services of the audit committee and internal audit function.

Internal control and corporate management

27.1 Audit committees [Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]

- 27.1.1 The accounting authority of a public entity must establish an audit committee as a sub-committee of the accounting authority.
- 27.1.2 A shared audit committee may be established for a public entity and any subsidiaries under the ownership and control of that entity.
- 27.1.3 The chairperson of the audit committee must be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the accounting authority or a person who fulfils an executive function in the public entity.
- 27.1.4 The majority of the members of an audit committee shall consist of non-executive members appointed by the accounting authority, although committee members need not all be members of the accounting authority. The majority of persons serving on an audit committee must be financially literate.
- 27.1.5 The relevant executive authority must concur with any premature termination of services of a member of the audit committee.
- 27.1.6 The audit committee must operate in terms of a written terms of reference, which must deal adequately with its membership, authority and responsibilities. The terms of reference must be reviewed at least annually to ensure its relevance.
- 27.1.7 It must be disclosed in the entity's annual report whether or not the audit committee has adopted a formal terms of reference and if so, whether the committee satisfied its responsibilities for the year, in compliance with its terms of reference.
- 27.1.8 The audit committee must, amongst others, review the following:
 - (a) the effectiveness of the internal control systems;
 - (b) the effectiveness of internal audit;
 - (c) the risk areas of the entity's operations to be covered in the scope of internal and external audits;
 - (d) the adequacy, reliability and accuracy of financial information provided to management and other users of such information;
 - (e) any accounting and auditing concerns identified as a result of internal and external audits;
 - (f) the entity's compliance with legal and regulatory provisions; and
 - (g) the activities of the internal audit function, including its annual work programme, co-ordination with the external auditors, the reports of significant investigations and the responses of management to specific recommendations; and
 - (h) where relevant, the independence and objectivity of the external auditors.

- 27.1.9 The audit committee must have explicit authority to investigate matters within its powers, as identified in the written terms of reference. The audit committee must be provided with the resources it needs to investigate such matters and shall have full access to information. The audit committee must safeguard all information supplied to it within the ambit of the law.
- 27.1.10 The audit committee must –
- (a) report and make recommendations to the accounting authority;
 - (b) report on the effectiveness of internal controls in the annual report of the institution; and
 - (c) comment on its evaluation of the financial statements in the annual report.
- 27.1.11 Should a report from internal audit (or any other source) to the audit committee implicate any member(s) of the accounting authority in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority and the Auditor-General.
- 27.1.12 The audit committee must communicate any concerns it deems necessary to the executive authority, the Auditor-General and if appropriate, to the external auditor.
- 27.1.13 The audit committee must meet at least annually with the Auditor-General or the external auditor, whichever applicable, to ensure that there are no unresolved issues of concern.

27.2 Internal controls and internal audit [Sections 51(1)(a)(ii) and 76(4)(b) and (e) of the PFMA]

- 27.2.1 The accounting authority must ensure that a risk assessment is conducted regularly so as to identify emerging risks of the public entity. A risk management strategy, which must include a fraud prevention plan, must be used to direct internal audit effort and priority and to determine the skills required of managers and staff to improve controls and to manage these risks. The strategy must be clearly communicated to all employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity.
- 27.2.2 All public entities to which these regulations apply must have an internal audit function.
- 27.2.3 A public entity and subsidiaries under the ownership control of the entity may have a shared internal audit function.
- 27.2.4 The internal audit function may, in accordance with preferred tendering procedures, be contracted out to an external institution with specialist audit expertise, provided that the external auditors may not perform the internal audit function.
- 27.2.5 The purpose, authority and responsibility of the internal audit function must, in consultation with the Board, be formally defined in an audit charter and be consistent with the Institute of Internal Auditors (“IIA”) definition of internal auditing.
- 27.2.6 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.
- 27.2.7 The internal audit function must, in consultation with the audit committee, prepare:
- (a) a rolling three-year strategic internal audit plan based on its assessment of key areas of risk for the public entity, having regard to its current operations, the operations proposed in its corporate or strategic plan and its risk management strategy;
 - (b) an internal audit plan for the first year of the rolling plan;
 - (c) plans indicating the scope of each audit in the annual internal audit plan; and

- (d) reports to the audit committee detailing its performance against the plan, to allow effective monitoring and intervention when necessary.
- 27.2.8 The internal audit function must report directly to the accounting authority and shall report at all audit committee meetings. The function must be independent of activities that are audited, with no limitation on its access to information.
- 27.2.9 The internal audit function must co-ordinate with other internal and external providers of assurance to ensure proper coverage and to minimise duplication of effort.
- 27.2.10 The internal audit function must assist the accounting authority in maintaining effective controls by evaluating those controls to determine their effectiveness and efficiency, and by developing recommendations for enhancement or improvement. The controls subject to evaluation should encompass the following:
 - (a) the information systems environment;
 - (b) the reliability and integrity of financial and operational information;
 - (c) the effectiveness of operations;
 - (d) safeguarding of assets; and
 - (e) compliance with laws, regulations and controls.
- 27.2.11 The internal audit function must assist the accounting authority in achieving the objectives of the institution by evaluating and developing recommendations for the enhancement or improvement of the processes through which:
 - (a) objectives and values are established and communicated;
 - (b) the accomplishment of objectives is monitored;
 - (c) accountability is ensured; and
 - (d) corporate values are preserved.

27.3 Chief financial officers

- 27.3.1 Unless directed otherwise by the relevant treasury, each public entity listed in Schedule 3A or 3C of the Act shall have a chief financial officer as the head of the finance division.
- 27.3.2 Without limiting the right of the accounting authority to assign specific responsibilities, the general responsibility of the chief financial officer is to assist the accounting authority in discharging the duties prescribed in Part 2 of Chapter 6 of the Act.

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Annual financial statements and annual reports

28.1 Financial statements [Section 55 of the PFMA]

[28.1.1] The annual financial statements must, include a report by the accounting authority which must also include a disclosure of emoluments of all directors and executive members of the holding entity and its subsidiaries. Emoluments paid or receivable by directors and executive members shall be disclosed in aggregate and per director and executive member in respect of the last financial period. Such disclosure is required whether such payment is receivable in the director's or executive member's capacity as director or executive member or in any other capacity. Disclosure in respect of executive directors, non-executive directors and executive members must be made separately.]

28.1.1 The annual financial statements must include a report by the accounting authority which must include the disclosure of remuneration in respect of all:

- (a) members of the accounting authority;
- (b) the chief executive officer or the person in charge of the public entity;
- (c) the chief financial officer;
- (d) persons serving on the public entity's senior management; and
- (e) members or persons in (a) to (d) above serving in other entities under the ownership control of the public entity.

28.1.2 Remuneration paid or receivable by the members or persons in paragraph 28.1.1 (a) to (e) shall be disclosed in aggregate and per member or person for the last financial period.

28.1.3 Disclosures in terms of paragraphs 28.1.1 and 28.1.2 is required whether such payment is receivable in the capacity as indicated in paragraph 28.1.1 (a) to (d) or in any other capacity.

28.1.[2]4 The disclosure requirements in [*Treasury Regulation 28.1.1*] paragraphs 28.1.1 to 28.1.3 shall include:

- (a) fees for services as a [**director or executive member**] member or person in paragraph 28.1.1 (a) to (d);
- (b) basic salary;
- (c) bonuses and performance related payments;
- (d) sums paid by way of expense, salary or other allowances;
- (e) contributions made to any pension fund, medical aid, insurance scheme, etc;
- (f) any commission, gain or profit sharing arrangements;
- (g) any share options, including their strike price and period; and
- (h) any other material benefits received.

[28.1.3 Public entities listed in Schedule 3A or 3C of the Act must adjust their financial years in accordance with the following table:

Existing year end	New year end	Period of financial statements and audit
30 September 2001	31 March 2003	18 months
31 October 2001	31 March 2003	17 months
30 November 2001	31 March 2003	16 months
31 December 2001	31 March 2003	15 months
31 January 2002	31 March 2003	14 months
28 February 2002	31 March 2003	13 months]

28.1.[4]5 Public entities listed in Schedule 3A or 3C of the Act may, after consultation with the designated accounting officer, submit their annual financial statements and any other information required in terms of the Act to the designated accounting officer for inclusion in the relevant department's annual report.

[28.1.5 For purposes of material [sections 50(1), 55(2) and 66(1) of the Act] and significant [section 54(2) of the Act], the accounting authority must develop and agree a framework of acceptable levels of materiality and significance with the relevant executive authority in consultation with the external auditors.]

28.1.6 In terms of section 55(1)(b) of the Act, public entities shall prepare financial statements in accordance with generally accepted accounting practice. Should the statements materially depart from Statements of GAAP, the financial statements must provide disclosure of the departure, the particulars thereof, the reasons therefore and the effect of such departure on the financial statements.

28.2 Annual reports [Section 55(1)(d)(i) of the PFMA]

[28.2.1 The annual report of public entities shall detail the materiality/significant framework applied during the financial year.]

28.2.1 Any material losses through criminal conduct and any irregular and fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the public entity.

28.2.2 Particulars of the public entity's strategic objectives and outcomes as identified and agreed on by the executive authority, the key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives and the entity's actual performance against the strategic objectives and outcomes, must be disclosed in the annual report of the public entity.

28.3 Materiality and Significance [Sections 55(2) and 54(2) of the PFMA]

28.3.1 For purposes of material [section 55(2) of the Act] and significant [section 54(2) of the Act], the accounting authority must develop and agree a framework of acceptable levels of materiality and significance with the relevant executive authority.

Corporate planning, shareholder's compacts and annual budgets

29.1 Corporate plans [Section 52 of the PFMA]

- 29.1.1 The corporate plan must cover a period of three years and must include –
- (a) strategic objectives and outcomes identified and agreed on by the executive authority in the shareholder's compact;
 - (b) strategic and business initiatives as embodied in business function strategies;
 - (c) key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives;
 - (d) a risk management plan;
 - (e) a fraud prevention plan;
 - (f) a materiality/significant framework, referred to in Treasury Regulation **[28.1.5] 28.3.1**;
 - (g) a financial plan addressing –
 - (i) projections of revenue, expenditure and borrowings;
 - (ii) asset and liability management;
 - (iii) cash flow projections;
 - (iv) capital expenditure programmes; and
 - (v) dividend policies.
- 29.1.2 The executive authority of a public entity may request additional information to be included in the corporate plan.
- 29.1.3 Public entities listed in Schedule 2 or 3B must:
- (a) submit a three-year borrowing programme (beginning with the first financial year of the corporate plan) with their corporate plan to the National Treasury; and
 - (b) submit quarterly reports on the borrowing programme to the National Treasury, reflecting actual borrowing for that quarter and any update of the borrowing programme.
- 29.1.4 Provincial government business enterprises listed in Schedule 3D and authorised to borrow by the Minister of Finance must –
- (a) submit to the relevant treasury, with their corporate plans, a three-year borrowing programme beginning with the first financial year of the corporate plan. The programme must be in terms of approvals and limits determined by the Minister, and in terms of the Borrowing Powers of Provincial Governments Act; and
 - (b) submit to the relevant treasury, quarterly reports on the approved borrowing programme, reflecting actual borrowing for that quarter and any update of the borrowing programme.
- 29.1.5 The relevant treasury must forward to the National Treasury –
- (a) a copy of the corporate plan and approved borrowing plan;
 - (b) quarterly updates reflecting actual borrowing for that quarter; and

- (c) any update in the borrowing programme of Schedule 3D provincial government business enterprises that are authorised to borrow.
- 29.1.6 The borrowing programme referred to in paragraphs 29.1.3 and 29.1.4 must include –
- (a) the terms and conditions on which the money is borrowed;
 - (b) information on proposed domestic borrowing;
 - (c) for national public entities, information on proposed foreign borrowing within the prescribed limit, where applicable;
 - (d) short and long-term borrowing;
 - (e) borrowing in relation to a pre-approved corporate plan;
 - (f) the maturity profile of the debt;
 - (g) the confirmation of compliance with existing and proposed loan covenants;
 - (h) debts guaranteed by the government;
 - (i) motivations for government guarantees, if required, and
 - (j) the executive authority's approval of the borrowing programme, if required by the legislation in terms of which the public entity was established.

29.2 Shareholder's compact

- 29.2.1 The accounting authority for a public entity listed in Schedule 2, 3B or 3D must, in consultation with its executive authority, annually conclude a shareholder's compact.
- 29.2.2 The shareholder's compact must document the mandated key performance measures and indicators to be attained by the public entity as agreed between the accounting authority and the executive authority.

29.3 Evaluation of performance

- 29.3.1 The accounting authority of a public entity must establish procedures for quarterly reporting to the executive authority in order to facilitate effective performance monitoring, evaluation and corrective action.

29.4 Annual budgets [Section 52(a) of the PFMA]

- 29.4.1 For purposes of section 52(a) of the Act, the projection of revenue, expenditure and borrowings must be in the same format as submitted for the accounting authority's approval.

Strategic planning

30.1 Strategic plan

- 30.1.1 The accounting authority for a public entity listed in Schedule 3A or 3C must annually submit a proposed strategic plan for approval by the relevant executive authority. Such a plan must be submitted at least six months before the start of the financial year of the designated department or another time period as agreed to between the executive authority and the public entity.
- 30.1.2 The strategic plan must be finalised and submitted to the relevant executive authority no later than 1 April of each year.
- 30.1.3 The strategic plan must –
- (a) cover a period of three years;
 - (b) include objectives and outcomes as identified by the executive authority;
 - (c) include multi-year projections of revenue and expenditure;
 - (d) include key performance measures and indicators for assessing the public entity's performance in delivering the desired outcomes and objectives;
 - (e) include the materiality/significant framework, referred to in Treasury Regulation **[28.1.5]** 28.3.1;
 - (f) be updated annually on a rolling basis; and
 - (g) form the basis for the annual reports of accounting authorities in terms of section 55 of the Act.
- 30.1.4 The executive authority may request additional information to be included in the strategic plan.

30.2 Evaluation of performance

- 30.2.1 The accounting authority of a public entity must establish procedures for quarterly reporting to the executive authority in order to facilitate effective performance monitoring, evaluation and corrective action.

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Cash, banking and investment management

31.1 Cash management [Section 7(1) of the PFMA]

- 31.1.1 The accounting authority of a public entity listed in Schedule 3 is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.
- 31.1.2 For the purposes of this regulation, sound cash management includes:
- (a) collecting revenue when it is due and banking it promptly;
 - (b) making payments no earlier than necessary, with due regard for efficient, effective and economical programme delivery and the public entity's normal terms of account payments;
 - (c) avoiding pre-payments for goods or services (i.e. payment in advance of the receipt of goods or services, unless required by the contractual arrangements with the supplier);
 - (d) accepting discounts to effect early settlement when the payment has been included in the monthly cash flow estimates provided to the chief financial officer;
 - (e) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the public entity are collected and banked promptly;
 - (f) accurately forecasting the public entity's cash flow in order to optimise its central cash management responsibilities;
 - (g) timing the in and outflow of cash;
 - (h) recognising the time value of money, i.e. economically, efficiently and effectively managing cash;
 - (i) taking any other action that avoids locking up money unnecessarily and inefficiently, such as managing inventories to the optimum level necessary for efficient and effective programme delivery, and selling surplus or under utilised assets;
 - (j) conducting bank reconciliations at least weekly;
 - (k) making regular cash forecasts;
 - (l) alignment of the approved budget with monthly cash flows;
 - (m) variance analyses of actual cash flow with the approved budget; and
 - (n) sweeping bank accounts to effectively utilise surplus cash.
- 31.1.3 The accounting authority must ensure that the public entity's cash management performance is reported regularly, but at least on a monthly basis.

31.2 Banking framework [Sections 7(2) and (3) of the PFMA]

- 31.2.1 When a public entity listed in Schedule 3 of the Act intends to open a new bank account, the National Treasury must approve of the bank. For purposes of section 7(2)(a) of the Act, existing banking arrangements can be regarded as approved by the National Treasury, but the accounting authority must, by 31 May of each year, submit to the National Treasury, a list of all such banking accounts of the public entity.

- 31.2.2 When going to tender, and if the National Treasury has not proposed a bank, the public entity must take into account –
- (a) that the bank is registered with the South African Registrar of Banks;
 - (b) that the bank is a member or sponsored by a member of the Payments Association of South Africa;
 - (c) the bank's contracting with persons, or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
 - (d) the cost effectiveness; and
 - (e) the ability of the bank to provide the required services which through adequate systems, infrastructure and branch networks.
- 31.2.3 The adjudication and awarding of tenders must be done in accordance with the public entity's own internal tendering procedures.
- 31.2.4 Only the accounting authority or the person to whom such authorisation has been delegated may open a bank account.

31.3 Investment policy [Sections 7(4) and 53(3) of the PFMA]

- 31.3.1 A public entity or a government business enterprise with funds under management must have an investment policy approved by the accounting authority.
- 31.3.2 The investment policy referred to in paragraph 31.3.1 must include –
- (a) selection of counter-parties through credit risk analyses;
 - (b) establishment of investment limits per institution;
 - (c) establishment of investment limits per investment instrument;
 - (d) monitoring of investments against limits;
 - (e) reassessment of investment policies on a regular basis;
 - (f) reassessment of counter-party credit risk based on credit ratings; and
 - (g) assessment of investment instruments based on liquidity requirements.
- 31.3.3 Unless exempted by the National Treasury, public entities that are listed in Schedule 3A or 3C of the Act must invest surplus funds with the Corporation for Public Deposits.
- 31.3.4 For purposes of paragraph 31.3.3, surplus funds refer to all money in excess of a given day's projected cash flow requirements plus a liquidity buffer needed to cover unforeseen expenditure on that day.
- 31.3.5 Public entities exempted by the National Treasury in terms of paragraph 31.3.3 must invest surplus funds in an institution with an investment grade rating and in line with an investment policy.

31.4 Disclosure of information

- 31.4.1 A public entity listed in Schedule 3 of the Act must promptly disclose information regarding cash, banking and investment management when so requested by the National Treasury.

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Borrowings and leases

32.1 Borrowing [Section 66 of the PFMA]

- 32.1.1 For purposes of section 66(5) of the Act, public entities listed in Schedule 3A or 3D of the Act may borrow money for bridging purposes with the approval of the Minister of Finance, subject to the following conditions:
- (a) the debt must be repaid within 30 days of the end of the financial year;
 - (b) borrowing may not exceed a limit determined in advance by the Minister of Finance, in consultation with the national executive authority or provincial MEC for finance, whichever appropriate;
 - (c) foreign borrowing may not be undertaken;
 - (d) a request for borrowing for bridging purposes must be submitted to the Minister of Finance at least 30 days before the borrowing. The following must be submitted together with the request –
 - (i) detailed cash flow and income and expenditure statements indicating how the debt will be repaid during the prescribed period; and
 - (ii) the terms and conditions on which the money is borrowed.
- 32.1.2 This regulation does not preclude the use of credit cards, fleet management cards or other credit facility repayable within 30 days of the date of statement.

32.2 Leases

- [32.2.1 For the purpose of this regulation, a lease is regarded as a contract that gives the lessee (the renter) the right to the use of property, plant or equipment for a fixed period of time with a fixed schedule of payments to the lessor (the owner).
- 32.2.2 The accounting authority of a public entity may, for the purpose of conducting the public entity's business, enter into operating lease transactions without any limitations.
- 32.2.3 Public entities listed in Schedules 2, 3A, 3B and 3D of the Act may only through the following functionaries, enter into finance lease transactions:
- (a) A public entity listed in Schedule 2: the accounting authority for that Schedule 2 public entity;
 - (b) A public entity listed in Schedule 3A: the Minister of Finance;
 - (c) A government business enterprise listed in Schedule 3B and authorised by the Minister by notice in the national Government Gazette: the accounting authority of that Schedule 3B government business enterprise, subject to conditions that the Minister may impose; and
 - (d) A provincial business enterprise listed in Schedule 3D and authorised by the Minister by notice in the national Government Gazette: the MEC for finance

in the province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.

32.2.4 For the purpose of this regulation, a lease is considered to be a finance lease if:

- (a) the lease transfers ownership of the asset to the lessee by the end of the lease period;**
- (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable, so that at the inception of the lease it is reasonably certain that the option will be exercised;**
- (c) the lease term is for the economic life of the asset even if the title is not transferred;**
- (d) at the inception of the lease, the present value of the minimum lease payments amount to at least 90% of the fair value of the leased asset;**
- (e) the leased asset is of a specialised nature such that only the public entity can use the asset without major modifications being made;**
- (f) the lessor's losses associated with the cancellation of the lease by the lessee is borne by the lessee; or**
- (g) the leased asset cannot be easily replaced by another asset.]**

32.2.1 For the purpose of this regulation, a lease is an agreement whereby the lessor conveys to the lessee in return for a payment or a series of payments the right to use an asset for an agreed period of time.

32.2.2 A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred.

32.2.3 An operating lease is a lease other than a finance lease.

32.2.4 The accounting authority of a public entity may, for the purposes of conducting the public entity's business, enter into lease transactions without any limitations provided that such transactions are limited to operating lease transactions.

32.2.5 With the exception of agreements concluded in terms of Treasury Regulation 16, public entities may only through the following functionaries, enter into finance lease transactions.

- (a) A public entity listed in Schedule 2: The accounting authority for that Schedule 2 public entity;
- (b) A national public entity listed in Schedule 3A: The Minister of Finance;
- (c) A national government business enterprise listed in Schedule 3B and authorised by the Minister by notice in the national Government Gazette: The accounting authority of that Schedule 3B government business enterprise, subject to conditions that the Minister may impose; and
- (d) A provincial government business enterprise listed in Schedule 3D and authorised by the Minister of Finance by notice in the national Government Gazette: The MEC responsible for Finance in the Province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.

Financial misconduct

33.1 Investigation of alleged financial misconduct [Sections 85(1)(b), (c) and (d) of the PFMA]

- 33.1.1 If an employee is alleged to have committed financial misconduct, the accounting authority of the public entity must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts.
- 33.1.2 The accounting authority must ensure that the investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.
- 33.1.3 If an accounting authority or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately.
- 33.1.4 The relevant treasury may, after consultation with the executive authority, –
 - (a) direct that a person other than an employee of the public entity conducts the investigation;
 - (b) issue any reasonable requirement regarding the way in which the investigation should be performed.

33.2 Criminal proceedings [Section 86 of the PFMA]

- 33.2.1 The accounting authority must advise the Auditor-General and the relevant executive authority and treasury of any criminal charges it has laid against any person in terms of section 86 of the Act.
- 33.2.2 The executive authority or relevant treasury may direct a public entity to lay charges of criminal financial misconduct against any person should an accounting authority fail to take appropriate action.

33.3 Reporting [Section 85(1)(a) and (e) of the PFMA]

- 33.3.1 The accounting authority must, on an annual basis, submit to the executive authority, the relevant treasury and Auditor-General a schedule of –
 - (a) the outcome of any disciplinary hearings and/or criminal charges;
 - (b) the names and ranks of employees involved; and
 - (c) the sanctions and any further actions taken against these employees.

Repeal of regulations

34.1 Repeal of regulations

34.1.1 The Supply Chain Management regulations issued in terms of Section 76(4)(c) of the Public Finance Management Act, 1999 on 5 December 2003 (Regulation Gazette No. 25767) are hereby repealed.

34.1.2 The Public Private Partnership regulations issued on 16 January 2004 (Regulation Gazette No. 25915) are hereby repealed.

