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NATIONAL TREASURY

No. R. 308 **1 April 2005**

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 2003 MUNICIPAL INVESTMENT REGULATIONS

The Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government, has in terms of section 168, read with section 13 and 99 (2) (g), of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), made the regulations as set out in the Schedule.

SCHEDULE

Definitions

1. In these 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 Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"investee" means an institution with which an investment is placed, or its agent;

"investment manager" means a natural person or legal entity that is a portfolio manager registered in terms of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), and Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), contracted by a municipality or municipal entity to –

(a) advise it on investments;

(b) manage investments on its behalf; or

(c) advise it on investments and manage investments on its behalf;

"trust money" means money held in trust on behalf of third parties in a trust contemplated in terms of section 12 of the Act.

Application

2. (1) These regulations apply to –

(a) all municipalities;

(b) all municipal entities; and

(c) all investment managers acting on behalf of, or assisting, a municipality or municipal entity in making or managing investments.

(2) These regulations do not apply –

(a) to a pension or provident fund registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any subsequent legislation; or

(b) in respect of trust money administered by a municipality or municipal entity where a trust deed prescribes how the trust money is to be invested.

(3) Municipal pension or provident funds which do not comply with subregulation (2) (a) are exempted from these regulations until 30 June 2005.

(4) The accounting officer of a municipality and municipal entity must provide the National Treasury with details of all pension or provident funds that do not comply with subregulation (2) (a) within 30 days of promulgation of these regulations.

Adoption of investment policies

3. (1) The investment policy to be established by a municipality in terms of section 13 (2) of the Act, must be –

(a) adopted by the council of the municipality; and

(b) consistent with the Act and these regulations.

(2) The board of directors of a municipal entity must adopt an investment policy for the entity consistent with the Act and these regulations.

(3) All investments made by a municipality or municipal entity, or by an investment manager on behalf of a municipality or municipal entity, must be in accordance with the investment policy of the municipality or entity and these regulations.

Core elements of investment policies

4. The investment policy of a municipality or municipal entity must –

(a) be in writing;

(b) give effect to these regulations; and

(c) set out –

(i) the scope of the policy;

(ii) the objectives of the policy, with due regard to the provisions of these regulations relating to –

(aa) the preservation and safety of investments as the primary aim;

(bb) the need for investment diversification; and

(cc) the liquidity needs of the municipality or municipal entity;

(iii) a minimum acceptable credit rating for investments, including –

(aa) a list of approved investment types that may be made, subject to regulation 6;

(bb) a list of approved institutions where or through which investments may be made, subject to regulation 10;

(iv) procedures for the invitation and selection of competitive bids or offers in accordance with Part 1 of Chapter 11 of the Act;

(v) measures for ensuring implementation of the policy and internal control over investments made;

(vi) procedures for reporting on and monitoring of all investments made, subject to regulation 9;

(vii) procedures for benchmarking and performance evaluation;

(viii) the assignment of roles and functions, including any delegation of decision-making powers;

(ix) if investment managers are to be used, conditions for their use, including their liability in the event of non-compliance with the policy or these regulations; and

(x) procedures for the annual review of the policy.

Standard of care to be exercised when making investments

5. Investments by a municipality or municipal entity, or by an investment manager on behalf of a municipality or entity –

(a) must be made with such judgment and care, under the prevailing circumstances, as a person of prudence, discretion and intelligence would exercise in the management of that person's own affairs;

(b) may not be made for speculation but must be a genuine investment; and

(c) must in the first instance be made with primary regard being to the probable safety of the investment, in the second instance to the liquidity needs of the municipality or municipal entity and lastly to the probable income derived from the investment.

Permitted investments

6. A municipality or municipal entity may invest funds only in any of the following investment types -

(a) securities issued by the national government;

(b) listed corporate bonds with an investment grade rating from a nationally or internationally recognised credit rating agency;

(c) deposits with banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990);

(d) deposits with the Public Investment Commissioners as contemplated by the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);

(e) deposits with the Corporation for Public Deposits as contemplated by the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);

(f) banker's acceptance certificates or negotiable certificates of deposit of banks registered in terms of the Banks Act, 1990;

(g) guaranteed endowment policies with the intention of establishing a sinking fund;

(h) repurchase agreements with banks registered in terms of the Banks Act, 1990;

(i) municipal bonds issued by a municipality; and

(j) any other investment type as the Minister may identify by regulation in terms of section 168 of the Act, in consultation with the Financial Services Board.

Investments denominated in foreign currencies prohibited

7. A municipality or municipal entity may make an investment only if the investment is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency.

Payment of commission

8. (1) No fee, commission or other reward may be paid to a councillor or official of a municipality or to a director or official of a municipal entity or to a spouse or close family member of such councillor, director or official in respect of any investment made or referred by a municipality or municipal entity.

(2) If an investee pays any fee, commission or other reward to an investment manager in respect of any investment made by a municipality or municipal entity, both the investee and the investment manager must declare such payment to the council of the municipality or the board of directors of the municipal entity by way of a certificate disclosing full details of the payment.

Reporting requirements

9. (1) The accounting officer of a municipality or municipal entity must within 10 working days of the end of each month, as part of the section 71 report required by the Act, submit to the mayor of the municipality or the board of directors of the municipal entity a report describing in accordance with generally recognised accounting practice the investment portfolio of that municipality or municipal entity as at the end of the month.

(2) The report referred to in subregulation (1) must set out at least –

(a) the market value of each investment as at the beginning of the reporting period;

(b) any changes to the investment portfolio during the reporting period;

(c) the market value of each investment as at the end of the reporting period; and

(d) fully accrued interest and yield for the reporting period.

Credit requirements

10. (1) A municipality or municipal entity must take all reasonable and prudent steps consistent with its investment policy and according to the standard of care set out in regulation 5, to ensure that it places its investments with credit-worthy institutions.

(2) A municipality or municipal entity must –

(a) regularly monitor its investment portfolio; and

(b) when appropriate liquidate an investment that no longer has the minimum acceptable credit rating as specified in its investment policy.

Portfolio diversification

11. A municipality or municipal entity must take all reasonable and prudent steps, consistent with its investment policy and according to the standard

of care prescribed in regulation 5, to diversify its investment portfolio across institutions, types of investment and investment maturities.

Miscellaneous provisions

12. (1) The responsibility and risk arising from any investment transaction vests in the relevant municipality or municipal entity.

(2) All investments made by a municipality or municipal entity must be in the name of that municipality or municipal entity.

(3) A municipality or municipal entity may not borrow money for the purpose of investment.

Existing investments

13. Nothing in these regulations compels a municipality or municipal entity to liquidate an investment which existed when these regulations took effect merely because such investment does not comply with a provision of these regulations.

Commencement

14. These regulations take effect on 1 April 2005.

No. R. 309 **1 April 2005**

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 2003
MUNICIPAL PUBLIC-PRIVATE PARTNERSHIP REGULATIONS

The Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government, has in terms of section 168 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), made the regulations as set out in the Schedule.

SCHEDULE

Definitions

1. In these 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 Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"activity", in relation to a public-private partnership, means the municipal function or the management or use of municipal property, or both, which is or is to be outsourced to a private party in terms of a public private partnership agreement;

"affordable", in relation to a public-private partnership agreement, means that the financial obligations (if any) to be incurred by a municipality in terms of the agreement can be met by –

(a) funds designated in the municipality's budget for the current year for the activity outsourced in terms of the agreement;

(b) funds destined for that activity in accordance with the future budgetary projections of the municipality;

(c) any allocations to the municipality; or

(d) a combination of such funds and allocations;

"municipal function" means –

(a) a municipal service; or

(b) any other activity within the legal competence of a municipality;

"municipal property", in relation to a municipality, includes any movable, immovable or intellectual property, owned by or under the control of –

(a) the municipality; or

(b) a municipal entity under the sole or shared control of the municipality;

"private party" excludes –

(a) a municipality;

(b) a municipal entity; or

(c) an organ of state, including an institution listed in any of the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"project officer" means a person appointed in terms of regulation 7 (1);

"public-private partnership" means a commercial transaction between a municipality and a private party in terms of which the private party –

(a) performs a municipal function for or on behalf of a municipality, or acquires the management or use of municipal property for its own commercial purposes, or both performs a municipal function for or on behalf of a municipality and acquires the management or use of municipal property for its own commercial purposes; and

(b) assumes substantial financial, technical and operational risks in connection with -

(i) the performance of the municipal function;

(ii) the management or use of the municipal property; or

(iii) both; and

(c) receives a benefit from performing the municipal function or from utilising the municipal property or from both, by way of –

(i) consideration to be paid or given by the municipality or a municipal entity under the sole or shared control of the municipality;

(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 the benefits referred to in subparagraphs (i) and (ii);

"transaction advisor" means a person appointed in terms of regulation 2 (1) (b);

"value for money", in relation to a public-private partnership agreement, means that the performance of a private party in terms of the agreement will result in a net benefit to the municipality in terms of cost, price, quality, quantity, risk transfer or any combination of those factors.

Initiation of feasibility studies

2. (1) Before a municipality initiates a feasibility study for a public-private partnership contemplated in section 120 (4) of the Act, the accounting officer

of the municipality must –

(a) notify the National Treasury and the relevant provincial treasury in writing of the municipality's intention, together with information on the expertise within the municipality to comply with that section of the Act; and

(b) if requested to do so by the National Treasury or the relevant provincial treasury, appoint a person with appropriate skills and experience, either from within or outside the municipality, as the transaction advisor to assist and advise the municipality on the preparation and procurement of the public-private partnership agreement.

(2) Subregulation (1) also applies when a municipality in terms of section 78(2) of the Municipal Systems Act explores the provision of a municipal service through an external mechanism to be appointed in terms of a public-private partnership agreement.

Additional matters to be addressed in feasibility studies

3. (1) A feasibility study conducted in terms of section 120 (4) of the Act, in addition to the matters specified in that section, must –

(a) identify and define the activity which the municipality proposes to outsource to a private party;

(b) assess the needs of the municipality in respect of such activity, including –

(i) the various options available to the municipality to satisfy those needs; and

(ii) the advantages and disadvantages of each option;

(c) assess the projected impact of the proposed outsourcing of the activity to a private party on the staff, assets, liabilities and revenue of the municipality or a municipal entity under the sole or shared control of the municipality, which must include an assessment of –

(i) the number of officials of the municipality or such municipal entity that would become redundant as a result of the outsourcing of the activity;

(ii) the cost to the municipality or such municipal entity of any staff retrenchments or the retention of redundant staff;

(iii) any assets of the municipality or such municipal entity

proposed to be placed under the control of the private party;

(iv) any assets of the municipality or such municipal entity that would become obsolete as a result of the outsourcing of the activity;

(v) any liabilities of the municipality or such municipal entity proposed to be assigned to the private party;

(vi) any debt of the municipality or such municipal entity attributed to the activity to be outsourced which the municipality or such municipal entity would retain; and

(vii) any revenue to be foregone by the municipality or such municipal entity as a result of the outsourcing of the activity; and

(d) recommend an appropriate plan for the procurement of the proposed public-private partnership agreement, if outsourcing of the activity is the preferred option.

(2) An assessment in terms of subregulation (1) (b) must show comparative projections of –

(a) the full costs to the municipality for the activity if that activity is not outsourced through a public-private partnership agreement; and

(b) the full costs to the municipality for the activity if that activity is outsourced through a public-private partnership agreement.

(3) Subregulations (1) and (2) need not be complied with if the activity which the municipality proposes to outsource is a municipal service in respect of which an assessment in terms of section 78 (3) (b) and a feasibility study in terms of section 78 (3) (c) of the Municipal Systems Act have already been carried out, provided that –

(a) such assessment and feasibility study cover the matters referred to in subregulations (1) and (2); and

(b) the documents reflecting the results of such assessment and feasibility study are included in the documents submitted to the council in terms of section 120 (6) (a) of the Act.

Procurement of public-private partnership agreements

4. (1) When complying with Part 1 of Chapter 11 of the Act, the accounting officer of the municipality must solicit the views and recommendations of the National

Treasury and the relevant provincial treasury on –

(a) the proposed bid documentation at least 30 days before bids are publicly invited; and

(b) the evaluation of the bids received and of any preferred bidder at least 30 days before any award is made.

(2) An award of a public-private partnership agreement –

(a) may be made only after the process set out in section 120 (6) of the Act has been completed; and

(b) is subject to compliance with section 33 of the Act.

(3) When complying with section 120 (6) (c) (i) of the Act, the municipality must specifically solicit the views and recommendations of the National Treasury on –

(a) the proposed terms and conditions of the draft public-private partnership agreement;

(b) the municipality's plan for the effective management of the agreement after its conclusion; and

(c) the preferred bidder's –

(i) competency to enter into the public-private partnership agreement; and

(ii) capacity to comply with his or her obligations in terms of the public-private partnership agreement.

(4) A provincial treasury is a prescribed organ of state for purposes of section 120 (6) (c) (iv) of the Act, and when complying with this section the municipality must specifically solicit the views and recommendations also of the relevant provincial treasury on the matters set out in paragraphs (a) to (c) of subregulation (3).

Basic requirements to which public-private partnership agreements must comply

5. (1) A public-private partnership agreement between a municipality and a private party must –

(a) provide value for money to the municipality;

(b) be affordable for the municipality;

(c) describe in specific terms the nature of the private party's role in the public-private partnership;

(d) confer effective powers on the municipality –

(i) to monitor implementation of, and to assess the private party's performance under, the agreement;

(ii) to manage and enforce the agreement;

(e) impose financial management duties on the private party, including transparent processes relating to internal financial control, budgeting, accountability and reporting;

(f) provide for the termination of the agreement if the private party –

(i) fails to comply with terms or conditions of the agreement; or

(ii) deliberately provides incorrect or misleading information to the municipality;

(g) restrain the private party, for the full period of the agreement, from offering otherwise than in accordance with the agreement an employment, consultancy or other contract to a person –

(i) who is an official of the municipality or a municipal entity under the sole or shared control of the municipality; or

(ii) who was such an official at any time during a period of one year before the offer is made; and

(h) restrain the private party, for a period of three years, from offering an employment, consultancy or other contract to an employee of the municipality directly involved in the negotiation of the agreement.

(i) comply with section 116 (1) of the Act.

(2) Any municipal employee participating in the negotiation of the public-private partnership agreement may not be employed by the private party in the public-private partnership for a period of three years.

Signing of public-private partnership agreements

6. (1) Only the accounting officer of a municipality may sign a public-private partnership agreement on behalf of the municipality.

(2) The accounting officer may not sign a public-private partnership agreement unless section 33 of the Act has been complied with.

Project officers

7. (1) As soon as a municipality initiates a project that may be a public-private partnership, the accounting officer must appoint a person with appropriate skills and experience, either from within or outside the municipality, as the project officer for the public-private partnership.

(2) The project officer is responsible for performing –

(a) the duties set out in section 116 (2) (c) (i) and (ii) of the Act; and

(b) any other duties or powers delegated by the accounting officer to the project officer in terms of section 79 of the Act.

Responsibilities of accounting officers

8. The accounting officer of a municipality which has entered into a public-private partnership agreement must, in addition to complying with section 116 (2) of the Act, take all reasonable steps to ensure –

(a) that the outsourced activity is effectively and efficiently carried out in accordance with the agreement;

(b) that municipal property which is placed under the control of the private party in terms of the agreement is appropriately protected against forfeiture, theft, loss, wastage and misuse; and

(c) that the municipality has contract management and monitoring capacity.

Amendment of public-private partnership agreements

9. (1) A public-private partnership agreement may be amended by the parties provided –

(a) section 116 (3) of the Act has been complied with; and

(b) the amendment is consistent with the basic essentials of public-private partnership agreements set out in regulation **5** and other applicable provisions of these Regulations.

(2) At least 60 days before a public-private partnership agreement is amended, the accounting officer must solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the reasons for the amendment. The period may be shortened if the National Treasury and relevant provincial treasury respond earlier.

Municipal entities

10. No municipal entity may initiate, procure or enter into a public-private partnership agreement on its own or on behalf of its parent municipality, but may be a party to a public-private partnership agreement initiated, procured and entered into by its parent municipality.

Exemption

11. A municipality that has commenced with the procurement of a public-private partnership prior to 1 December 2004 is exempt from these regulations in relation to that partnership, provided the agreement is concluded by 30 June 2005.

Commencement

12. These regulations take effect on 1 April 2005.

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