

Act No. 56, 2003

LOCAL GOVERNMENT:
MUNICIPAL FINANCE MANAGEMENT ACT, 2003

- (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81(1)(e);
- (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d). 5
- (3) A senior manager or other official of a municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently— 10
- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d). 15
- (4) A municipality must—
- (a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and 20
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act. 25

Financial misconduct by officials of municipal entities

- 172.** (1) The accounting officer of a municipal entity commits an act of financial misconduct if that accounting officer deliberately or negligently—
- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipal entity; 30
- (c) makes or permits, or instructs another official of the municipal entity to make, an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of this Act must be— 35
- (i) submitted to the entity's board of directors or parent municipality or to the Auditor-General; or
- (ii) made public.
- (2) A senior manager or other official of a municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 106, commits an act of financial misconduct if that senior manager or official deliberately or negligently— 40
- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty; 45
- (c) makes an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).
- (3) A municipal entity must—
- (a) investigate allegations of financial misconduct against the accounting officer, a senior manager or other official of the entity unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and 50
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, senior manager or official in terms of Schedule 3 of the Municipal Systems Act. 55

Part 2: Criminal proceedings**Offences**

- 173.** (1) The accounting officer of a municipality is guilty of an offence if that accounting officer—
- (a) deliberately or in a grossly negligent way— 5
 - (i) contravenes or fails to comply with a provision of section 61(2)(b), 62(1), 63(2)(a) or (c), 64(2)(a) or (d) or 65(2)(a), (b), (c), (d), (f) or (i);
 - (ii) fails to take reasonable steps to implement the municipality's supply chain management policy referred to in section 111;
 - (iii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or 10
 - (iv) fails to take all reasonable steps to prevent corruptive practices—
 - (aa) in the management of the municipality's assets or receipt of money; or
 - (bb) in the implementation of the municipality's supply chain management policy; 15
 - (b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the municipality or on money received or spent by the municipality; or
 - (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be — 20
 - (aa) submitted to the Auditor-General, the National Treasury or any other organ of state; or
 - (bb) made public.
- (2) The accounting officer of a municipal entity is guilty of an offence if that accounting officer— 25
- (a) deliberately or in a grossly negligent way—
 - (i) contravenes or fails to comply with a provision of section 94(2)(b), 95(1), 96(2), 97(a) or 99(2)(a), (c) or (e);
 - (ii) fails to take all reasonable steps to prevent irregular or fruitless and wasteful expenditure; or 30
 - (iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity's assets, receipt of money or supply chain management system;
 - (b) deliberately misleads or withholds information from the Auditor-General or the entity's parent municipality on any bank accounts of the municipal entity or on money received or spent by the entity; or 35
 - (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be—
 - (aa) submitted to the entity's parent municipality, the Auditor-General, the National Treasury or any other organ of state; or 40
 - (bb) made public.
- (3) A senior manager or other official of a municipality or municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 or 106, is guilty of an offence if that senior manager or official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation. 45
- (4) A councillor of a municipality is guilty of an offence if that councillor—
- (a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act; 50
 - (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of this Act; 55
 - (c) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or

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- (d) interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.
- (5) A councillor, an official of a municipality or municipal entity, a member of the board of directors of a municipal entity or any other person is guilty of an offence if that person deliberately or in a grossly negligent way— 5
- (a) impedes an accounting officer from complying with a provision of this Act;
 - (b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a municipality or municipal entity;
 - (c) makes a withdrawal in contravention of section 11;
 - (d) fails to comply with section 49; 10
 - (e) contravenes a provision of section 115(2), 118 or 126(5); or
 - (f) provides false or misleading information for the purposes of any document which must in terms of a requirement of this Act be— 15
 - (i) submitted to the council, mayor or accounting officer of a municipality or to the Auditor-General or the National Treasury; or
 - (ii) made public.

Penalties

174. A person is liable on conviction of an offence in terms of section 173 to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of applicable legislation. 20

Part 3: General**Regulations on financial misconduct procedures and criminal proceedings**

175. (1) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may make regulations prescribing—
- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the MEC for local government in the province and the Auditor-General, including— 25
 - (i) particulars of the alleged financial misconduct; and
 - (ii) steps taken in connection with such financial misconduct; 30
 - (b) matters relating to internal investigations by municipalities and municipal entities of allegations of financial misconduct;
 - (c) the circumstances in which the National Treasury or the MEC for local government in the province may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct; 35
 - (d) criteria for the composition and functioning of a disciplinary board which hears a charge of financial misconduct;
 - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the MEC for local government in the province and the Auditor-General; and 40
 - (f) any other matters to the extent necessary to enforce the provisions of this Act.
- (2) A regulation in terms of subsection (1) may—
- (a) differentiate between different— 45
 - (i) kinds of municipalities, which may, for the purposes of this section, be defined either in relation to categories, types or budgetary size of municipalities or in any other manner;
 - (ii) categories of municipal entities;
 - (iii) categories of accounting officers; or
 - (iv) categories of other officials; or
 - (b) be limited in its application to a particular— 50

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- (i) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of municipality or in any other manner;
- (ii) category of municipal entities;
- (iii) category of accounting officers; or
- (iv) category of other officials.

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CHAPTER 16

MISCELLANEOUS

Liability of functionaries exercising powers and functions in terms of this Act

176. (1) No municipality or any of its political structures, political office-bearers or officials, no municipal entity or its board of directors or any of its directors or officials, and no other organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of any loss or damage resulting from the exercise of that power or the performance of that function in good faith.

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(2) Without limiting liability in terms of the common law or other legislation, a municipality may recover from a political office-bearer or official of the municipality, and a municipal entity may recover from a director or official of the entity, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office.

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Delays and exemptions

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177. (1) The Minister may by notice in the *Gazette*—

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding five years from the date when this section takes effect; or
- (b) where practicalities impede the strict application of a specific provision of this Act, exempt any municipality or municipal entity from, or in respect of, such provision for a period and on conditions determined in the notice.

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(2) A delay or exemption in terms of subsection (1) may—

- (a) apply to—
 - (i) municipalities generally; or
 - (ii) municipal entities generally; or
- (b) be limited in its application to a particular—
 - (i) municipality;
 - (ii) kind of municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of municipality or in any other manner;
 - (iii) municipal entity; or
 - (iv) category of municipal entities.

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(3) To facilitate the restructuring of the electricity industry as authorised by the Cabinet member responsible for such restructuring, the Minister, acting with the concurrence of the Cabinet member responsible for local government and after consultation with organised local government, may, by notice in the *Gazette*, exempt any municipality or municipal entity from any specific provision of this Act for a period of not more than four years and on conditions determined in the notice, provided that such exemption may not be understood as obligating any municipality to transfer any staff, assets or liabilities.

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Transitional provisions

178. (1) Anything done in terms of a provision repealed by section 179(1), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

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(2) All municipalities must within three months of the date on which this section takes effect, submit to the National Treasury a list of—

- (a) all corporate entities in which the municipality or a municipal entity under its sole or shared control has an interest, specifying—
 - (i) the name and address of the corporate entity; 5
 - (ii) the purpose, extent and other particulars of the interest;
 - (iii) if such corporate entity is a municipal entity, whether the entity is under the sole or shared control of the municipality; and
 - (iv) such other information as may be required by the National Treasury;
- (b) all public-private partnerships to which the municipality is a party, with a value of more than one million Rands in total or per annum, specifying— 10
 - (i) the name and physical address of the private party participating in the public-private partnership;
 - (ii) the purpose and other particulars of the public-private partnership; and
 - (iii) such other information as may be required by the National Treasury; and 15
- (c) all other types of contracts of the municipality for a period beyond 1 January 2007 and with a value of more than one million Rands in total or per annum.

Repeal and amendment of legislation

179. (1) The legislation referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule. 20

(2) Despite the repeal of section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), by subsection (1) of this section, the provisions contained in subsections (6), (6A) and (7) of section 10G remain in force until the legislation envisaged in section 229(2)(b) of the Constitution is enacted.

(3) The repeal of the Municipal Accountants Act, 1988 (Act No. 21 of 1988), takes effect on a date determined by the Minister by notice in the *Gazette*. 25

Short title and commencement

180. (1) This Act is called the Local Government: Municipal Finance Management Act, 2003, and takes effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may in terms of subsection (1) be determined for different provisions of the Act. 30

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(Section 179)**

No. and year of Act	Short title of Act	Extent of repeal or amendment
Act No. 91 of 1983	Promotion of Local Government Affairs Act, 1983	The repeal of section 17(D).
Act No. 21 of 1988	Municipal Accountants Act, 1988	The repeal of the whole.
Act No. 209 of 1993	Local Government Transition Act, 1993	The repeal of section 10G.