GOVERNMENT NOTICE

NATIONAL TREASURY

CORRECTION NOTICE

In Ordinary (National) Government Gazette No. 37682, of 30 May 2014, Government Notice No. 425 is hereby withdrawn and replaced with the following:

No. R. 430 **30 May 2014**

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

MUNICIPAL REGULATIONS ON FINANCIAL MISCONDUCT PROCEDURES AND CRIMINAL PROCEEDINGS

The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, made the regulations as set out in the Schedule.

SCHEDULE

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CHAPTER 1
INTERPRETATION

Definitions

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

"Act" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"designated official" means the official identified in a municipality or municipal entity to receive reports of allegations of financial offences against councillors or members of the board of directors of municipal entities;

"disciplinary board" means a disciplinary board established in terms of regulation 4(1) or a disciplinary board of a district municipality or provincial structure referred to in regulation 4(8);

"financial misconduct" means any act of financial misconduct referred to in-

(a) section 171 of the Act committed by an official of a municipality; or
(b) section 172 of the Act committed by an official of a municipal entity;

"financial offence" means any offence referred to in section 173 of the Act committed by-

(a) an official of a municipality or municipal entity;
(b) a councillor of a municipality;
(c) a member of the board of directors of a municipal entity; or
(d) any other person;

"investigator" means the board, treasury, person or team conducting a full investigation in terms of regulation 5(4).

CHAPTER 2
FINANCIAL MISCONDUCT PROCEDURES

Application of Chapter

2. This Chapter applies to alleged financial misconduct.

Reporting of allegations of financial misconduct

3. (1) Any person must report an allegation of financial misconduct against–

(a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;
(b) an official of a municipality other than its accounting officer, to that accounting officer;
(c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;

(d) an official of a municipal entity other than its accounting officer, to that accounting officer.

(2) The mayor, the accounting officer or chairperson of the board of directors, as the case may be, must table an allegation referred to in sub-regulation (1) before the municipal council or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the council or the board of directors.

(3) The person to whom an allegation of financial misconduct has been reported in terms of sub-regulation (1) must ensure that the report is treated in a confidential manner.

(4) This regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor, member of the board of directors of a municipal entity, or official of a municipality or municipal entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the Act.

(5) An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality or municipal entity as to why he or she should not be suspended, within seven days of being notified of the allegation.

Establishment of disciplinary board and its functioning

4. (1) A municipal council or board of directors of a municipal entity must establish a disciplinary board to investigate allegations of financial misconduct in the municipality or municipal entity, and to monitor the institution of disciplinary proceedings against an alleged transgressor.

(2) A disciplinary board is an independent advisory body that assists the council or the board of directors with the investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.

(3) A disciplinary board must consist of maximum five members appointed on a part- time basis by the council or board of directors for a period not exceeding three years, in accordance with a process as determined by the municipal council or board of directors.

(4) A member of a disciplinary board must-

(a) be a natural person;

(b) be a citizen or permanent resident of the Republic and resident in the province where the municipality is situated; and

(c) not be disqualified under sub-regulation (5).

(5) The following persons are disqualified from membership of a disciplinary board:

(a) a person who has been convicted of an offence in terms of this regulation or any other legislation;

(b) a person who, whether in the Republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged document or any offence of which dishonesty is an element;
(c) a person who has at any time been removed from any office of trust on account of misconduct or dishonesty;
(d) an accounting officer of a municipality or municipal entity;
(e) a political office-bearer or a member of a board of directors; and
(f) a person who is an office-bearer in a political party.

(6) A disciplinary board may consist of-
(a) the head of the internal audit unit within the municipality or municipal entity or representative of an organisation performing internal audit functions for the municipality or municipal entity if the internal audit function is outsourced;
(b) one member of the Audit Committee of the municipality or municipal entity;
(c) a senior manager from the legal division in the municipality or municipal entity;
(d) a representative of the National Treasury or the provincial treasury; and
(e) any other person as may be determined by the municipal council or board of directors of a municipal entity.

(7) If an official referred to in sub-regulation (6)(a) or (c) is implicated in the financial misconduct, the municipality or municipal entity may co-opt a senior manager in another unit, who does not have a conflict of interest.

(8) If a municipality or municipal entity does not have sufficient capacity to establish a disciplinary board, a disciplinary board established by a district municipality or an equivalent provincial or national structure established for a similar purpose may, with approval of the district municipality or provincial or national structure, be used as a disciplinary board for the municipality or municipal entity.

Preliminary investigation of allegations of financial misconduct

5. (1) On receiving a report in terms of regulation 3(1), if the municipal council, board of directors or accounting officer of the municipality or municipal entity, is satisfied that there is reasonable cause to believe that an act of financial misconduct has been committed, it must within seven days refer the matter to the disciplinary board to conduct a preliminary investigation into the allegation as envisaged in terms of section 171(4)(a) or 172(3)(a) of the Act.

(2) A disciplinary board must conduct a preliminary investigation to determine whether or not the allegation is founded and make a recommendation to the council or board of directors as to whether sufficient grounds exists to warrant a full investigation into the allegation.

(3) If, during a preliminary investigation, the disciplinary board determines that the allegation is frivolous, vexatious, speculative or obviously unfounded, the investigation must be terminated.

(4) If the disciplinary board determines that the allegation is founded, a full investigation must be conducted by–
(a) the disciplinary board;
(b) the provincial treasury or the National Treasury, but only if the conditions specified in regulation 19 apply; or

(c) where the cost, the seniority of the alleged transgressor and the seriousness or sensitivity of investigating the alleged financial misconduct, warrants such a step, by–

(i) a person appointed by the council or board of directors who has appropriate specialist expertise and who is not an official of the municipality or municipal entity; or

(ii) an independent team of investigators appointed by the council or the board of directors;

in accordance with the applicable supply chain management prescripts.

(5) A team of investigators appointed in terms of sub-regulation (4)(c)(ii) may include–

(a) a person, other than an official of the municipality or municipal entity, with appropriate specialist expertise, designated by the municipal council or the board of directors; or

(b) an official of the department responsible for local government in the relevant province, designated by the department; or

(c) an official of the provincial treasury or the National Treasury, designated by the relevant treasury.

(6) The investigator or investigating team appointed in terms of sub-regulation (4)(c) must, within a period of 30 days of the appointment, submit a report with recommendations to the mayor or accounting officer as may be appropriate.

Investigation of allegation of financial misconduct and submission of reports

6. (1) A municipality or municipal entity must develop terms of reference for an investigation, in terms of regulation 5, within seven days of receipt of a referral from a disciplinary board for approval by the council or the board of directors.

(2) If the council or the board of directors has not acted on the recommendation by the disciplinary board that the financial misconduct is founded and sufficient grounds exist to warrant a full investigation into the allegation, the disciplinary board may request the provincial treasury or the National Treasury for assistance and a possible intervention in terms of regulation 19.

(3) After completion of a full investigation, the investigator must–

(a) compile a report on the investigation;

(b) submit its report to the mayor or the chairperson of the board of directors and the accounting officer together with its findings and recommendations, if applicable, regarding disciplinary steps that should be taken against the alleged transgressor; and

(c) immediately inform the speaker of the council of the submission of the report referred to in paragraph (b), and also submit a copy of the report to the provincial treasury and the National Treasury.

(4) The mayor, speaker, accounting officer or the chairperson of the board of directors must table the report of the investigation referred to in sub-

regulation (3)(b) in the council or the board of directors at the first sitting after the report is finalised.

(5) If the report that is tabled in the council or the board is amended, the person tabling the report must provide written reasons for the amendments to the council or the board.

(6) If the findings or recommendations of the report referred to in sub-regulation (3)(b) are rejected by the council or the board, reasons for the rejection must be provided to the investigator within five days of the rejection.

(7) Where the recommendations of the report referred to in sub-regulation (3)(b) regarding disciplinary steps against the alleged transgressor are not implemented, the investigator must notify the provincial treasury and the National Treasury for a possible intervention in terms of regulation 19.

(8) If the investigator recommends that disciplinary proceedings be instituted against the alleged transgressor the council or board of directors must by way of resolution institute the disciplinary proceedings-

(a) in the case of a senior manager, in accordance with the Local Government: Disciplinary Codes and Procedures for Senior Managers Regulations made in terms of the Municipal Systems Act; or
(b) in the case of an official who is not a senior manager, in accordance with the applicable collective bargaining agreement concluded in the bargaining council established for municipalities and municipal entities.

(9) Where the alleged transgressor is found guilty of financial misconduct after the disciplinary proceedings, he or she may not be re-employed in any municipality for a period of ten years as provided in section 57A(3) of the Municipal Systems Act.

Purpose of investigations

7. An investigation in terms of regulations 5 and 6 must establish–

(a) whether the allegation of financial misconduct has any substance; and
(b) if it has substance, whether sufficient grounds exist for instituting disciplinary proceedings against the alleged transgressor.

CHAPTER 3
CRIMINAL PROCEEDINGS

Application of Chapter

8. This Chapter applies to alleged financial offences.

Reporting of allegations of financial offences

9. (1) Any person may report an allegation of a financial offence against–

(a) a councillor of a municipality, to the designated official, the Minister of Finance and the MEC for finance;

(b) the speaker of a municipality, to the mayor of the municipality;

(c) a member of the board of directors of a municipal entity, to the designated official or, if the designated official is implicated, to the mayor and the accounting officer of the entity's parent municipality.

(2) An allegation referred to in sub-regulation (1)(a) or (b) must be dealt with in terms of the Code of Conduct for Councillors in Schedule 1 to the Municipal Systems Act.

(3) An allegation referred to in sub-regulation 1(c) must be dealt with in terms of the Code of Conduct for directors and members of staff of municipal entities in section 93L of the Municipal Systems Act.

Reporting of alleged financial offence to South African Police Service

10. (1) Where a financial offence has been committed by any person referred to in section 173 of the Act, the accounting officer or, if the accounting officer is involved, the municipal council or board of directors of the municipal entity, as the case may be, must report the alleged financial offence to the South African Police Service.

(2) If there is a likelihood of further financial loss for a municipality or municipal entity as a result of a financial offence, the accounting officer, council or board of directors must report the matter without delay to the South African Police Service and not await the completion of any investigation referred to in regulations 5 and 6 related to the financial offence.

(3) Where a financial offence is successfully prosecuted, the judgment must be reported to the National Treasury, together with full details of the convicted person, the name of the municipality where the offence was committed and the sanction that was imposed.

Allegations of financial offences not amounting to breaches of Code of Conduct for Councillors

11. (1) The designated official must, on receipt of a report of alleged financial offence referred to in section 173(4) or (5) of the Act by a councillor–

(a) authorise an investigation of the facts and circumstances of the alleged financial offence; and

(b) give that councillor an opportunity to make, within five days, a written submission with regard to the alleged financial offence.

(2) As soon as the designated official has complied with sub-regulation (1), the designated official must submit a report, within five days of completing the investigation, on the outcome of the investigation to the municipal council.

(3) The designated official must ensure that the public has access to the report referred to in sub-regulation (2).

(4) The designated official must, within five days of submitting the report to council, submit the report on the outcome of the investigation to–

(a) the MEC for finance in the province;
(b) the MEC for local government in the province;
(c) Minister of Finance, and
(d) Minister responsible for local government.

Allegations of financial offences not amounting to breaches of Code of Conduct for members of the board of directors of municipal entities

12. (1) The designated official must, on receipt of a report of alleged financial offence referred to in section 173(5) of the Act by a member of the board of directors or any other person referred to in that section–

(a) authorise an investigation of the facts and circumstances of the alleged financial offence; and
(b) give that member of the board of directors or other person the opportunity to make, within five days, a written submission with regard to the alleged financial offence.

(2) As soon as the designated official has complied with sub-regulation (1), the designated official must, within five days of completing the investigation, submit a report on the outcome of the investigation to the board of directors.

(3) The designated official must ensure that the public has access to the report referred to in sub-regulation (2).

(4) The designated official must, within five days of submission to the board of directors, furnish a report on the outcome of the investigation to–

(a) the board of directors;
(b) the municipal council of the entity's parent municipality;
(c) the MEC for finance in the province;
(d) the MEC for local government in the province;
(e) the Minister of Finance; and
(f) the Minister responsible for local government

CHAPTER 4

GENERAL

Application of Chapter

13. This Chapter applies to alleged financial misconduct and financial offences.

Preparation of information document on alleged financial misconduct and financial offences

14. (1) The municipality or municipal entity must prepare an information document on any alleged financial misconduct or financial offence stating–

(a) the name and position of the person against whom the allegation was made;
(b) a summary of the facts and circumstances of the alleged financial misconduct or financial offence, including the monetary value involved;
(c) any disciplinary steps taken or to be taken against the person concerned, or if no disciplinary steps have been or are to be taken, the reasons for that decision;
(d) in the case of a financial offence, the case number issued by the South African Police Service; and
(e) any steps taken or to be taken to recover any unauthorised, irregular or fruitless and wasteful expenditure incurred as a result of the alleged financial misconduct or financial offence in terms of section 32 of the Act.

(2) The municipality or municipal entity must within five days of finalising the information document submit it, together with any investigation report compiled in terms of regulation 5 and 6 to–

(a) the mayor of the municipality;
(b) the accounting officer of the parent municipality;
(c) the chairperson of the board of directors;
(d) the MEC for local government in the province;
(e) the national department responsible for local government;
(f) the provincial treasury;
(g) the National Treasury; and
(h) the Auditor-General;

Tabling of information document in municipal council or board of directors of municipal entities

15. (1) The mayor of a municipality or the chairperson of the board of directors must table the information document submitted in terms of regulation 14(2) in the municipal council or the board of directors at the first meeting of the council or the board of directors after receipt of the document.

(2) Any resolutions taken by the municipal council or the board of directors relating to the information document referred to in sub-regulation (1) must be reported to the provincial treasury and the national treasury.

(3) If the mayor, the accounting officer or the chairperson of the board of directors, as the case may be, is of the view that the alleged financial misconduct or financial offence may have a significant impact on the finances of the municipality, and that the funds need to be recovered from the alleged transgressor concerned, the mayor must request the speaker of the municipal council to convene a special meeting of the council to discuss the recoverability of the funds in accordance with section 32 of the Act.

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Reports on disciplinary proceedings and criminal charges

16. (1) The municipality or municipal entity must report to the institutions referred to in regulation 14(2) (a) to (h)–

(a) any decision to institute or not to institute disciplinary proceedings against the person who allegedly committed a financial misconduct;
(b) the reasons for the decision;
(c) the outcome where disciplinary proceedings have been instituted; and
(d) whether a charge has been laid against the person concerned with the South African Police Service, if the alleged financial misconduct constitutes a financial offence in terms of section 173 of the Act.

(2) Municipalities and municipal entities must report on all suspensions, disciplinary or criminal proceedings instituted in cases of financial misconduct in their annual reports.

Procedures for confidential reporting financial misconduct and financial offence

17. (1) A municipality must–

(a) establish reporting procedures for persons to report allegations of financial misconduct and financial offences on a confidential basis; and
(b) make public the reporting procedures in accordance with section 21(1)(a) and (b) of the Municipal Systems Act.

(2) A parent municipality together with its municipal entity, must establish reporting procedures to allow persons to report allegations of financial misconduct and financial offence on a confidential basis and the municipal entity must make the reporting procedures public.

(3) When establishing reporting procedures in terms of sub-regulation (1) or (2), a municipality or municipal entity must take into account its financial and administrative capacity.

Protection of officials reporting allegations of financial misconduct and financial offence

18. The Protected Disclosures Act 2000 (Act No. 26 of 2000) applies to an official who makes a report or disclosure against a political office-bearer, a member of the board or an official who is alleged to have committed financial misconduct or a financial offence.

Interventions by treasury

19. If a municipality, designated official or municipal entity fails to investigate an allegation of financial misconduct or financial offence, the provincial treasury or the National Treasury may direct that the allegation be investigated.

Transitional arrangements

20. Any disciplinary process instituted before the commencement of these Regulations and not yet completed–

(a) must be finalised in terms of the prescripts applicable at the time when the process was instituted; or

(b) may, by agreement in writing between the affected official, political office-bearer or director of the municipal entity and the municipal council or board of directors, be finalised in terms of these Regulations.

Short title and commencement

21. These Regulations are called the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings and takes effect on 1 July 2014.

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