

**PUBLIC FINANCE MANAGEMENT ACT
NO. 1 OF 1999**

as amended by

Public Finance Management Amendment Act, No. 29 of 1999

ACT

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

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CHAPTER 1

INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF THIS ACT

1. Definitions.— In this Act, unless the context otherwise indicates—

“accounting officer” means a person mentioned in section 36;

“accounting authority” means a body or person mentioned in section 49;

“Accounting Standards Board” means the board established in terms of section 87;

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

“constitutional institution” means an institution listed in Schedule 1;

“department” means a national or provincial department;

“executive authority”—

- (a) in relation to a national department, means the Cabinet member who is accountable to Parliament for that department;
- (b) in relation to a provincial department, means the member of the Executive Council of a province who is accountable to the provincial legislature for that department;
- (c) in relation to a national public entity, means the Cabinet member who is accountable to Parliament for that public entity or in whose portfolio it falls; and
- (d) in relation to a provincial public entity, means the member of the provincial Executive Council who is accountable to the provincial legislature for that public entity or in whose portfolio it falls;

[Definition of “executive authority” substituted by s. 1 (b) of Act No. 29 of 1999.]

“financial year”—

- (a) means a year ending 31 March; or
- (b) in relation to a public entity that existed when this Act took effect and that has a different financial year in terms of other legislation, means that financial year, provided the National Treasury has approved that other financial year;

[Definition of “financial year” amended by s. 1 (c) of Act No. 29 of 1999.]

“financial statements” means statements consisting of at least—

- (a) a balance sheet;
- (b) an income statement;
- (c) a cash-flow statement;
- (d) any other statements that may be prescribed; and
- (e) any notes to these statements;

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

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

“irregular expenditure” means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including—

- (a) this Act; or
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act; or
- (c) any provincial legislation providing for procurement procedures in that provincial government;

“main division within a vote” means one of the main segments into which a vote is divided and which—

- (a) specifies the total amount which is appropriated for the items under that segment; and
- (b) is approved by Parliament or a provincial legislature, as may be appropriate, as part of the vote;

“MEC for finance” means the member of an Executive Council of a province responsible for finance in the province;

“Minister” means the Minister of Finance;

“national department” means—

- (a) a department listed in Schedule 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excluding a provincial administration; or
- (b) an organisational component listed in Schedule 3 of that Act;

“national government business enterprise” means an entity which—

- (a) is a juristic person under the ownership control of the national executive;
- (b) has been assigned financial and operational authority to carry on a business activity;
- (c) as its principal business, provides goods or services in accordance with ordinary business principles; and
- (d) is financed fully or substantially from sources other than—
 - (i) the National Revenue Fund; or
 - (ii) by way of a tax, levy or other statutory money;

“national public entity” means—

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

“National Treasury” means the National Treasury established by section 5;

“overspending”—

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

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

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

“prescribe” means prescribe by regulation or instruction in terms of section 76;

“provincial department” means—

- (a) a provincial administration listed in Schedule 1 of the Public Service Act, 1994; or
- (b) a department within a provincial administration and listed in Schedule 2 of that Act;

“provincial government business enterprise” means an entity which—

- (a) is a juristic person under the ownership control of a provincial executive;
- (b) has been assigned financial and operational authority to carry on a business activity;
- (c) as its principal business, provides goods or services in accordance with ordinary business principles; and
- (d) is financed fully or substantially from sources other than—
 - (i) a Provincial Revenue Fund; or
 - (ii) by way of a tax, levy or other statutory money;

“provincial public entity” means—

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

“provincial treasury” means a treasury established in terms of section 17;

“public entity” means a national or provincial public entity;

“Revenue Fund” means—

- (a) the National Revenue Fund mentioned in section 213 of the Constitution; or
- (b) a Provincial Revenue Fund mentioned in section 226 of the Constitution;

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

“trading entity” means an entity operating within the administration of a department for the provision or sale of goods or services, and established—

- (a) in the case of a national department, with the approval of the National Treasury; or
- (b) in the case of a provincial department, with the approval of the relevant provincial treasury acting within a prescribed framework;

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

“unauthorised expenditure” means—

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

“vote” means one of the main segments into which an appropriation Act is divided and which—

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

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

3. Institutions to which this Act applies.— (1) This Act, to the extent indicated in the Act, applies to—

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

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

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

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

4. Amendments to this Act.— Draft legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament—

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

CHAPTER 2

NATIONAL TREASURY AND NATIONAL REVENUE FUND

Part 1: National Treasury

5. Establishment.— (1) A National Treasury is hereby established, consisting of—

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

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

6. Functions and powers.— (1) The National Treasury must—

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

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

- (a) must prescribe uniform treasury norms and standards;
- (b) must enforce this Act and any prescribed norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems, in national departments;
- (c) must monitor and assess the implementation of this Act, including any prescribed norms and standards, in provincial departments, in public entities and in constitutional institutions;
- (d) may assist departments and constitutional institutions in building their capacity for efficient, effective and transparent financial management;

- (e) may investigate any system of financial management and internal control in any department, public entity or constitutional institution;
- (f) must intervene by taking appropriate steps, which may include steps in terms of section 100 of the Constitution or the withholding of funds in terms of section 216 (2) of the Constitution, to address a serious or persistent material breach of this Act by a department, public entity or constitutional institution; and
- (g) may do anything further that is necessary to fulfil its responsibilities effectively.

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

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

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

- (a) with a bank registered in South Africa and approved in writing by the National Treasury; and
- (b) after any prescribed tendering procedures have been complied with.

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

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

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

8. Annual consolidated financial statements.— (1) The National Treasury must—

- (a) prepare consolidated financial statements in accordance with generally recognised accounting practice for each financial year in respect of—
 - (i) national departments;
 - (ii) public entities under the ownership control of the national executive;
 - (iii) constitutional institutions;
 - (iv) the South African Reserve Bank;
 - (v) the Auditor-General; and
 - (vi) Parliament; and
- (b) submit those statements for audit to the Auditor-General within three months after the end of that financial year.

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

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

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

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

- (a) the Minister must submit to Parliament a written explanation setting out the reasons why they were not submitted; and
- (b) the Auditor-General may issue a special report on the delay.

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

10. Delegations by National Treasury.— (1) The Minister may—

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

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

- (a) is subject to any limitations or conditions that the Minister may impose;
- (b) may authorise that head, in the case of subsection (1) (a)—
 - (i) to sub-delegate, in writing, the delegated power to another National Treasury official, or to the holder of a specific post in the National Treasury, or to the accounting officer of a constitutional institution or a department, or to the accounting authority for a public entity; or
 - (ii) to instruct another National Treasury official, or the holder of a specific post in the National Treasury, or the accounting officer for a constitutional institution or a department, or the accounting authority for a public entity, to perform the assigned duty;
- (c) may authorise a provincial treasury, in the case of subsection (1) (b)—
 - (i) to sub-delegate, in writing, the delegated power to an official in that provincial treasury, or to the holder of a specific post in that provincial treasury, or to the accounting officer for a provincial department, or to the accounting authority for a provincial public entity; or
 - (ii) to instruct an official in that provincial treasury, or the holder of a specific post in that provincial treasury, or the accounting officer for a provincial department, or the accounting authority for a provincial public entity, to perform the assigned duty; and
- (d) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The Minister may confirm, vary or revoke any decision taken by the head of a department forming part of the National Treasury, or by a provincial treasury, as a result of a

delegation, instruction or request in terms of subsection (1) (a) or (b), or by a treasury official or accounting officer or accounting authority as a result of an authorisation in terms of subsection (2) (b) or (c), subject to any rights that may have become vested as a consequence of the decision.

Part 2: National Revenue Fund

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

- (a) all money received by the national government must be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and
- (b) no money may be withdrawn from the Fund except—
 - (i) in terms of an appropriation by an Act of Parliament; or
 - (ii) as a direct charge against the Fund, subject to section 15 (1) (a) (ii).

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

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

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

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

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

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

- (a) to refund any tax, levy or duty credits or any other charges in connection with taxes, levies or duties;
- (b) to make other refunds approved by the National Treasury; or
- (c) to transfer to a member of the South African Customs Union any money collected on its behalf.

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

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

13. Deposits into National Revenue Fund.— (1) All money received by the national government must be paid into the National Revenue Fund, except money received by—

- (a) Parliament;
- (b) a national public entity;
- (c) the South African Reserve Bank;

- (d) the Auditor-General;
- (e) the national government from donor agencies which in terms of legislation or the agreement with the donor, must be paid to the Reconstruction and Development Programme Fund;
- (f) a national department—
 - (i) operating a trading entity, if the money is received in the ordinary course of operating the trading entity;
 - (ii) in trust for a specific person or category of persons or for a specific purpose;
 - (iii) from another department to render an agency service for that department; or
 - (iv) if the money is of a kind described in Schedule 4; or
- (g) a constitutional institution—
 - (i) in trust for a specific person or category of persons or for a specific purpose; or
 - (ii) if the money is of a kind described in Schedule 4.

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

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

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

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

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

- (a) the exclusion is not reasonable within the context of section 213 of the Constitution; or
- (b) the National Treasury regards the withdrawal of the exclusion to be necessary for transparency or more effective and accountable financial management.

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

- (a) A national government business enterprise which is a company and in which the state is not the sole shareholder; and
- (b) the national public entities listed in Schedule 2.

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

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

15. Withdrawals and investments from National Revenue Fund.— (1) Only the National Treasury may withdraw money from the National Revenue Fund, and may do so only—

- (a) to provide funds that have been authorised—
 - (i) in terms of an appropriation by an Act of Parliament; or
 - (ii) as a direct charge against the National Revenue Fund provided for in the Constitution or this Act, or in any other Act of Parliament provided the direct charge in such a case is listed in Schedule 5;
- (b) to refund money invested by a province in the National Revenue Fund; or
- (c) to refund money incorrectly paid into, or which is not due to, the National Revenue Fund.

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

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

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

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

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

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

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

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

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

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

CHAPTER 3
PROVINCIAL TREASURIES AND PROVINCIAL REVENUE FUNDS

Part 1: Provincial treasuries

17. Establishment.— (1) There is a provincial treasury for each province, consisting of—

- (a) the MEC for finance in the province, who is the head of the provincial treasury; and
- (b) the provincial department responsible for financial matters in the province.

(2) The MEC for finance as the head of a provincial treasury takes the policy and other decisions of the treasury, except those decisions taken as a result of a delegation or instruction in terms of section 20.

18. Functions and powers.— (1) A provincial treasury must—

- (a) prepare the provincial budget;
- (b) exercise control over the implementation of the provincial budget;
- (c) promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of provincial departments and provincial public entities; and
- (d) ensure that its fiscal policies do not materially and unreasonably prejudice national economic policies.

(2) A provincial treasury—

- (a) must issue provincial treasury instructions not inconsistent with this Act;
- (b) must enforce this Act and any prescribed national and provincial norms and standards, including any prescribed standards of generally recognised accounting practice and uniform classification systems, in provincial departments;
- (c) must comply with the annual Division of Revenue Act, and monitor and assess the implementation of that Act in provincial public entities;
- (d) must monitor and assess the implementation in provincial public entities of national and provincial norms and standards;
- (e) may assist provincial departments and provincial public entities in building their capacity for efficient, effective and transparent financial management;
- (f) may investigate any system of financial management and internal control applied by a provincial department or a provincial public entity;
- (g) must intervene by taking appropriate steps, which may include the withholding of funds, to address a serious or persistent material breach of this Act by a provincial department or a provincial public entity;
- (h) must promptly provide any information required by the National Treasury in terms of this Act; and
- (i) may do anything further that is necessary to fulfil its responsibilities effectively.

19. Annual consolidated financial statements.— (1) A provincial treasury must—

- (a) prepare consolidated financial statements, in accordance with generally recognised accounting practice, for each financial year in respect of—
 - (i) provincial departments in the province;
 - (ii) public entities under the ownership control of the provincial executive of the province; and
 - (iii) the provincial legislature in the province; and
- (b) submit those statements to the Auditor-General within three months after the end of that financial year.

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

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

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

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

- (a) the MEC must submit to the legislature a written explanation setting out the reasons why they were not submitted; and
- (b) the Auditor-General may issue a special report on the delay.

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

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

- (a) is subject to any limitations or conditions that the MEC for finance may impose;
- (b) may authorise that head—
 - (i) to, in writing, sub-delegate the delegated power to another treasury official or the holder of a specific post in that treasury, or to the accounting officer for a provincial department, or to the accounting authority for a provincial public entity in the province; or
 - (ii) to instruct another provincial treasury official or the holder of a specific post in that treasury, or the accounting officer for a provincial department, or the accounting authority for a provincial public entity in the province, to perform the assigned duty; and
- (c) does not divest the MEC for finance of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

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

Part 2: Provincial Revenue Funds

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

- (a) all money received by the provincial government must promptly be paid into the Fund, except money reasonably excluded by this Act or another Act of Parliament; and
- (b) no money may be withdrawn from the Fund except—
 - (i) in terms of an appropriation by a provincial Act; or
 - (ii) as a direct charge against the Fund when it is provided for in the Constitution or a provincial Act.

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

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

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

- (a) the provincial legislature in the province;
- (b) a provincial public entity in the province;
- (c) the provincial government from donor agencies which in terms of legislation or the agreement with the donor, must be paid to the Reconstruction and Development Programme Fund;
- (d) a provincial department in the province—
 - (i) operating a trading entity, if the money is received in the ordinary course of operating the trading entity;
 - (ii) in trust for a specific person or category of persons or for a specific purpose;
 - (iii) from another department to render an agency service on behalf of that department;
 - (iv) in terms of the annual Division of Revenue Act, if the money is exempted by that Act from payment into the Revenue Fund; or
 - (v) if the money is of a kind described in Schedule 4.

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

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

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

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

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

- (a) the exclusion is not reasonable within the context of section 226 of the Constitution; or
- (b) the National Treasury regards the withdrawal of the exclusion to be necessary for transparency or more effective and accountable financial management.

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

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

- (a) if a provincial Act provides for the transfer to be a direct charge; and
- (b) provided that the amount of the transfer does not exceed the amount that would otherwise have been excluded from payment into the Fund.

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

24. Withdrawals and investments from Provincial Revenue Funds.— (1) Only a provincial treasury may withdraw money from a Provincial Revenue Fund, and may do so only—

- (a) to provide funds that have been authorised—
 - (i) in terms of an appropriation by a provincial Act; or
 - (ii) as a direct charge against the Provincial Revenue Fund provided for in the Constitution or a provincial Act;
- (b) to refund money incorrectly paid into, or which is not due to, the Provincial Revenue Fund; or
- (c) to deposit into or invest money in the National Revenue Fund.

(2) A payment in terms of subsection (1) (b) or (c) is a direct charge against a Provincial Revenue Fund if a provincial Act so provides.

(3) (a) A provincial treasury, in accordance with a prescribed framework, may invest temporarily in the Republic money in the province's Provincial Revenue Fund that is not immediately needed.

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

25. Use of funds in emergency situations.— (1) The MEC for finance in a province may authorise the use of funds from that province's Provincial Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest in the province, be postponed to a future appropriation by the provincial legislature.

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

(3) An amount authorised in terms of subsection (1) is a direct charge against the Provincial Revenue Fund if a provincial Act so provides.

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

(a) be reported to the provincial legislature and the Auditor-General within 14 days; and

(b) be attributed to a vote.

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

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

CHAPTER 4

NATIONAL AND PROVINCIAL BUDGETS

26. Annual appropriations.— Parliament and each provincial legislature must appropriate money for each financial year for the requirements of the state and the province, respectively.

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

(2) The MEC for finance in a province must table the provincial annual budget for a financial year in the provincial legislature not later than two weeks after the tabling of the national annual budget, but the Minister may approve an extension of time for the tabling of a provincial budget.

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

(a) estimates of all revenue expected to be raised during the financial year to which the budget relates;

(b) estimates of current expenditure for that financial year per vote and per main division within the vote;

(c) estimates of interest and debt servicing charges, and any repayments on loans;

(d) estimates of capital expenditure per vote and per main division within a vote for that financial year and the projected financial implications of that expenditure for future financial years;

(e) estimates of revenue excluded in terms of section 13 (1) or 22 (1) from the relevant Revenue Fund for that financial year;

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

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

28. Multi-year budget projections.— (1)The Minister and the MEC for finance in a province must annually table in the National Assembly and in that province's provincial legislature, respectively, a multi-year budget projection of—

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

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

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

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

- (a) may be utilised only for services for which funds were appropriated in the previous annual budget or adjustments budget; and
- (b) may not—
 - (i) during the first four months of that financial year, exceed 45 per cent of the total amount appropriated in the previous annual budget;
 - (ii) during each of the following months, exceed 10 per cent of the total amount appropriated in the previous annual budget; and
 - (iii) in aggregate, exceed the total amount appropriated in the previous annual budget.

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

(4) This section does not apply in respect of a province unless a provincial Act provides that the withdrawal of funds in terms of this section is a direct charge against that province's Revenue Fund.

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

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

- (a) adjustments required due to significant and unforeseeable economic and financial events affecting the fiscal targets set by the annual budget;
- (b) unforeseeable and unavoidable expenditure recommended by the national executive or any committee of Cabinet members to whom this task has been assigned;
- (c) any expenditure in terms of section 16;
- (d) money to be appropriated for expenditure already announced by the Minister during the tabling of the annual budget;
- (e) the shifting of funds between and within votes or to follow the transfer of functions in terms of section 42;
- (f) the utilisation of savings under a main division of a vote for the defrayment of excess expenditure under another main division of the same vote in terms of section 43; and
- (g) the roll-over of unspent funds from the preceding financial year.

31. Provincial adjustments budgets.— (1) The MEC for finance in a province may table an adjustments budget in the provincial legislature, subject to subsection (3).

(2) An adjustments budget of a province may only provide for—

- (a) the appropriation of funds that have become available to the province;
- (b) unforeseeable and unavoidable expenditure recommended by the provincial Executive Council of the province within a framework determined by the Minister;
- (c) any expenditure in terms of section 25;
- (d) money to be appropriated for expenditure already announced by the MEC for finance during the tabling of the annual budget;
- (e) the shifting of funds between and within votes or to follow the transfer of functions in terms of section 42;
- (f) the utilisation of savings under a main division within a vote for the defrayment of excess expenditure under another main division within the same vote in terms of section 43; and
- (g) the roll-over of unspent funds from the preceding financial year.

(3) The Minister may determine the time when an adjustments budget may be tabled in a provincial legislature, as well as the format for such budgets.

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

(2) After the end of a prescribed period, but at least quarterly, every provincial treasury must submit to the National Treasury a statement of revenue and expenditure with regard to the Revenue Fund for which that treasury is responsible, for publication in the national *Government Gazette* within 30 days after the end of each prescribed period.

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

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

(4) The National Treasury may determine—

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

33. Withholding of appropriated funds.— The relevant treasury—

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

34. Unauthorised expenditure.— (1) Unauthorised expenditure does not become a charge against a Revenue Fund except when—

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

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

35. Unfunded mandates.— Draft national legislation that assigns an additional function or power to, or imposes any other obligation on, a provincial government, must, in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications of that function, power or obligation to the province.

CHAPTER 5

DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS

Part 1: Appointment of accounting officers

36. Accounting officers.— (1) Every department and every constitutional institution must have an accounting officer.

(2) Subject to subsection (3)—

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

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

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

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

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

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

Part 2: Responsibilities of accounting officers

38. General responsibilities of accounting officers.— (1) The accounting officer for a department, trading entity or constitutional institution—

- (a) must ensure that that department, trading entity or constitutional institution has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;
- (c) must take effective and appropriate steps to—
 - (i) collect all money due to the department, trading entity or constitutional institution;

- (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
- (iii) manage available working capital efficiently and economically;
- (d) is responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;
- (e) must comply with any tax, levy, duty, pension and audit commitments as may be required by legislation;
- (f) must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;
- (g) on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;
- (h) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who—
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or
 - (iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;
- (i) when transferring funds in terms of the annual Division of Revenue Act, must ensure that the provisions of that Act are complied with;
- (j) before transferring any funds (other than grants in terms of the annual Division of Revenue Act or to a constitutional institution) to an entity within or outside government, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;
- (k) must enforce compliance with any prescribed conditions if the department, trading entity or constitutional institution gives financial assistance to any entity or person;
- (l) must take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the accounting officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the responsible executive authority;
- (m) must promptly consult and seek the prior written consent of the National Treasury on any new entity which the department or constitutional institution intends to establish or in the establishment of which it took the initiative; and
- (n) must comply, and ensure compliance by the department, trading entity or constitutional institution, with the provisions of this Act.

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

39. Accounting officers' responsibilities relating to budgetary control.— (1) The accounting officer for a department is responsible for ensuring that—

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

- (b) effective and appropriate steps are taken to prevent unauthorised expenditure.
- (2) An accounting officer, for the purposes of subsection (1), must—
 - (a) take effective and appropriate steps to prevent any overspending of the vote of the department or a main division within the vote;
 - (b) report to the executive authority and the relevant treasury any impending—
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue; and
 - (iii) overspending of the department's vote or a main division within the vote; and
 - (c) comply with any remedial measures imposed by the relevant treasury in terms of this Act to prevent overspending of the vote or a main division within the vote.

40. Accounting officers' reporting responsibilities .— (1)The accounting officer for a department, trading entity or constitutional institution—

- (a) must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards;
- (b) must prepare financial statements for each financial year in accordance with generally recognized accounting practice;
- (c) must submit those financial statements within two months after the end of the financial year to—
 - (i) the Auditor-General for auditing; and
 - (ii) the relevant treasury to enable that treasury to prepare consolidated financial statements in terms of section 8 or 19;
- (d) must submit within five months of the end of a financial year to the relevant treasury and, in the case of a department or trading entity, also to the executive authority responsible for that department or trading entity—
 - (i) an annual report on the activities of that department, trading entity or constitutional institution during that financial year;
 - (ii) the financial statements for that financial year after those statements have been audited; and
 - (iii) the Auditor-General's report on those statements;
- (e) must, in the case of a constitutional institution, submit to Parliament that institution's annual report and financial statements referred to in paragraph (d), and the Auditor-General's report on those statements, within one month after the accounting officer received the Auditor-General's audit report; and
- (f) is responsible for the submission by the department or constitutional institution of all reports, returns, notices and other information to Parliament, the relevant provincial legislature, an executive authority, the relevant treasury or the Auditor-General, as may be required by this Act.

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

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

- (a) fairly present the state of affairs of the department, trading entity or constitutional institution, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
- (b) include particulars of—
 - (i) any material losses through criminal conduct, and any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure, that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a result of such losses, unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure;
 - (iii) any material losses recovered or written off; and
 - (iv) any other matters that may be prescribed.

(4) The accounting officer of a department must—

- (a) each year before the beginning of a financial year provide the relevant treasury in the prescribed format with a breakdown per month of the anticipated revenue and expenditure of that department for that financial year; and
- (b) each month submit information in the prescribed format on actual revenue and expenditure for the preceding month and the amounts anticipated for that month in terms of paragraph (a); and
- (c) within 15 days of the end of each month submit to the relevant treasury and the executive authority responsible for that department—
 - (i) the information for that month;
 - (ii) a projection of expected expenditure and revenue collection for the remainder of the current financial year; and
 - (iii) when necessary, an explanation of any material variances and a summary of the steps that are taken to ensure that the projected expenditure and revenue remain within budget.

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

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

42. Accounting officers' responsibilities when assets and liabilities are transferred.— (1) When assets or liabilities of a department are transferred to another department or other institution in terms of legislation or following a reorganisation of functions, the accounting officer for the transferring department must—

- (a) draw up an inventory of such assets and liabilities; and
- (b) provide the accounting officer for the receiving department or other institution with substantiating records, including personnel records of staff to be transferred.

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

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

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

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

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

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

- (a) an amount specifically and exclusively appropriated for a purpose mentioned under a main division within a vote;
- (b) an amount appropriated for transfer to another institution; and
- (c) an amount appropriated for capital expenditure in order to defray current expenditure.

(5) A utilisation of a saving in terms of subsection (1) is a direct charge against the relevant Revenue Fund provided that, in the case of a province, that province enacts such utilisation as a direct charge.

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

Part 3: Other officials of departments and constitutional institutions

44. Assignment of powers and duties by accounting officers.— (1) The accounting officer for a department, trading entity or constitutional institution may—

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

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

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

- (c) may either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and
- (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

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

45. Responsibilities of other officials.— An official in a department, trading entity or constitutional institution—

- (a) must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

CHAPTER 6 PUBLIC ENTITIES

Part 1: Application of this Chapter

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

47. Unlisted public entities.— (1) The Minister, by notice in the national *Government Gazette*—

- (a) must amend Schedule 3 to include in the list all public entities that are not listed; and
- (b) may make technical changes to the list.

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

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

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

- (a) A constitutional institution, the South African Reserve Bank and the Auditor-General;
- (b) any public institution which functions outside the sphere of national or provincial government; and
- (c) any institution of higher education.

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

- (a) national government business enterprises;
- (b) provincial government business enterprises;
- (c) national public entities; and
- (d) provincial public entities.

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

Part 2: Accounting authorities for public entities

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

(2) If the public entity—

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

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

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

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

50. Fiduciary duties of accounting authorities.— (1)The accounting authority for a public entity must—

- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- (c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and
- (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

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

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

- (b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.
- (3) A member of an accounting authority must—
 - (a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and
 - (b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

51. General responsibilities of accounting authorities.— (1) An accounting authority for a public entity—

- (a) must ensure that that public entity has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (b) must take effective and appropriate steps to—
 - (i) collect all revenue due to the public entity concerned; and
 - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
 - (iii) manage available working capital efficiently and economically;
- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
- (d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- (e) must take effective and appropriate disciplinary steps against any employee of the public entity who—
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control system of the public entity; or
 - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
- (f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;
- (g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and

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

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

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

- (a) a projection of revenue, expenditure and borrowings for that financial year in the prescribed format; and
- (b) a corporate plan in the prescribed format covering the affairs of that public entity or business enterprise for the following three financial years, and, if it has subsidiaries, also the affairs of the subsidiaries.

53. Annual budgets by non-business Schedule 3 public entities.— (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority.

(2) The budget must be submitted to the executive authority through the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

(3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.

(4) The accounting authority for such a public entity is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget.

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

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

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

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;

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

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

(4) The executive authority may exempt a public entity listed in Schedule 2 or 3 from subsection (2).

55. Annual report and financial statements.— (1)The accounting authority for a public entity—

- (a) must keep full and proper records of the financial affairs of the public entity;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for that public entity;
- (c) must submit those financial statements within two months after the end of the financial year—
 - (i) to the auditors of the public entity for auditing; and
 - (ii) if it is a business enterprise or other public entity under the ownership control of the national or a provincial government, to the relevant treasury; and
- (d) must submit within five months of the end of a financial year to the relevant treasury, to the executive authority responsible for that public entity and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General—
 - (i) an annual report on the activities of that public entity during that financial year;
 - (ii) the financial statements for that financial year after the statements have been audited; and
 - (iii) the report of the auditors on those statements.

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

- (a) fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned;
- (b) include particulars of—
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any losses recovered or written off;
 - (iv) any financial assistance received from the state and commitments made by the state on its behalf; and

- (v) any other matters that may be prescribed; and
- (c) include the financial statements of any subsidiaries.

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

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

Part 3: Other officials of public entities

56. Assignment of powers and duties by accounting authorities.— (1) The accounting authority for a public entity may—

- (a) in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or
- (b) instruct an official in that public entity to perform any of the duties assigned to the accounting authority in terms of this Act.

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

- (a) is subject to any limitations and conditions the accounting authority may impose;
- (b) may either be to a specific individual or to the holder of a specific post in the relevant public entity; and
- (c) does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

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

57. Responsibilities of other officials.— An official in a public entity—

- (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

Part 4: External auditors

58. Appointment of auditors.— (1) The annual financial statements of a public entity must be audited annually by—

- (a) the Auditor-General; or

- (b) a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), as an accountant and auditor, and engaged in public practice as such.

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

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

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

- (a) after consultation with the accounting authority for that public entity; and
- (b) with the concurrence of the Auditor-General.

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

- (a) in writing give notice of the proposed discharge to the auditor, with reasons; and
- (b) give the auditor an opportunity to make written representations to the executive authority and the Auditor-General within 20 days of receipt of the notice.

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

60. Duties and powers of auditors.— (1) An auditor appointed in terms of section 58 (1) (b) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

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

- (a) has access at all reasonable times to the accounting records, including all books, vouchers, documents and other property of the public entity;
- (b) may require from the accounting authority for that public entity such information and explanations as are necessary for the purpose of the audit; and
- (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management.

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

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

- (a) must receive notice of every meeting of the public entity's audit committee; and
- (b) may attend, and participate in, any meeting of the audit committee at the expense of the public entity.

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

- (a) the annual financial statements of the public entity fairly present the financial position and the results obtained by the entity in accordance with subsection 55 (1) (b) applied on a basis consistent with that of the preceding year;
- (b) if required by the Auditor-General, the performance information furnished in terms of subsection 55 (2) (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and

- (c) the transactions that had come to the auditor's attention during auditing were in all material respects in accordance with the mandatory functions of the public entity determined by law or otherwise.
- (2) The auditor—
- (a) must report to the executive authority responsible for the public entity the results of any investigation carried out under subsection 60 (2) (c); and
 - (b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should in the public interest be brought to the notice of Parliament.

62. Duties and powers of Auditor-General.— (1) The Auditor-General may—

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

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

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

(4) The Auditor-General may—

- (a) claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the public entity concerned; and
- (b) annually report to Parliament on specific and general findings regarding the accountability of public entities.

CHAPTER 7

EXECUTIVE AUTHORITIES

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

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

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

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

(2) If implementation of the directive is likely to result in unauthorised expenditure, the accounting officer will be responsible for any resulting unauthorised expenditure unless the

accounting officer has informed the executive authority in writing of the likelihood of that unauthorised expenditure.

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

65. Tabling in legislatures.— (1) The executive authority responsible for a department or public entity must table in the National Assembly or a provincial legislature, as may be appropriate—

- (a) the annual report and financial statements referred to in section 40 (1) (d) or 55 (1) (d) and the audit report on those statements, within one month after the accounting officer for the department or the accounting authority for the public entity received the audit report; and
- (b) the findings of a disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83.

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

- (a) the executive authority must table a written explanation in the legislature setting out the reasons why they were not tabled; and
- (b) the Auditor-General may issue a special report on the delay.

CHAPTER 8

LOANS, GUARANTEES AND OTHER COMMITMENTS

Part 1: General principles

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

- (a) is authorised by this Act; and
- (b) in the case of public entities, is also authorised by other legislation not in conflict with this Act; and
- (c) in the case of loans by a province or a provincial government business enterprise under the ownership control of a provincial executive, is within the limits as set in terms of the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996).

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

- (a) The National Revenue Fund: The Minister or, in the case of the issue of a guarantee, indemnity or security, the responsible Cabinet member acting with the concurrence of the Minister in terms of section 70.
- (b) A Provincial Revenue Fund: The MEC for finance in the province, acting in accordance with the Borrowing Powers of Provincial Governments Act, 1996.

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

- (a) A public entity listed in Schedule 2: The accounting authority for that Schedule 2 public entity.
- (b) A national government business enterprise listed in Schedule 3 and authorised by notice in the national *Government Gazette* by the Minister: The accounting authority for that government business enterprise, subject to any conditions the Minister may impose.
- (c) Any other national public entity: The Minister or, in the case of the issue of a guarantee, indemnity or security, the Cabinet member who is the executive authority responsible for that public entity, acting with the concurrence of the Minister in terms of section 70.
- (d) A provincial government business enterprise listed in Schedule 3 and authorised by notice in the national *Government Gazette* by the Minister: The MEC for finance in the province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.

(4) Constitutional institutions and provincial public entities not mentioned in subsection (3) (d) may not borrow money, nor issue a guarantee, indemnity or security, nor enter into any other transaction that binds or may bind the institution or entity to any future financial commitment.

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

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

- (7) A public entity authorised to borrow money—
 - (a) must annually submit to the Minister a borrowing Programme for the year; and
 - (b) may not borrow money in a foreign currency above a prescribed limit, except when that public entity is a company in which the state is not the only shareholder.

67. No provincial foreign commitments.— A provincial government, including any provincial public entity, may not borrow money or issue a guarantee, indemnity or security or enter into any other transaction that binds itself to any future financial commitment, denominated in a foreign currency or concluded on a foreign financial market.

68. Consequences of unauthorised transactions.— If a person, otherwise than in accordance with section 66, lends money to an institution to which this Act applies or purports to issue on behalf of such an institution a guarantee, indemnity or security, or enters into any

other transaction which purports to bind such an institution to any future financial commitment, the state and that institution is not bound by the lending contract or the guarantee, indemnity, security or other transaction.

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

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

- (a) the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive; or
- (b) a national public entity referred to in section 66 (3) (c) in respect of a financial commitment incurred or to be incurred by that public entity.

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

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

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

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

Part 2: Loans by national government

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

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

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

73. Interest and repayments of loans to be direct charges.— The following payments in connection with loans are direct charges against the National Revenue Fund:

- (a) the repayment of money borrowed by the Minister in terms of section 66 (2) (a) or repaid in terms of section 74;
- (b) the interest payable on money borrowed; and

- (c) any costs associated with such borrowing and approved by the National Treasury.

74. Repayment, conversion and consolidation of loans.— The Minister may, on such terms and conditions as the Minister may determine, and, when necessary, with the concurrence of the lender—

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

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

CHAPTER 9

GENERAL TREASURY MATTERS

76. Treasury regulations and instructions.— (1) The National Treasury must make regulations or issue instructions applicable to departments, concerning—

- (a) any matter that must be prescribed for departments in terms of this Act;
- (b) the recovery of losses and damages;
- (c) the handling of, and control over, trust money and property;
- (d) the rendering of free services;
- (e) the writing off of losses of state money or other state assets or amounts owed to the state;
- (f) liability for losses and damages and procedures for recovery;
- (g) the cancellation or variation of contracts to the detriment of the state;
- (h) the settlement of claims by or against the state;
- (i) the waiver of claims by the state;
- (j) the remission of money due to the Revenue Fund, refunds of revenue and payments from the Revenue Fund, as an act of grace;
- (k) the alienation, letting or other disposal of state assets; and
- (l) gifts or donations by or to the state.

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

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

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

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

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

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

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

77. Audit committees.— An audit committee—

- (a) must consist of at least three persons of whom, in the case of a department—
 - (i) one must be from outside the public service;
 - (ii) the majority may not be persons in the employ of the department, except with the approval of the relevant treasury; and
 - (iii) the chairperson may not be in the employ of the department;
- (b) must meet at least twice a year; and
- (c) may be established for two or more departments or institutions if the relevant treasury considers it to be more economical.

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

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

80. Determination of interest rates for debt owing to state.— (1) The Minister, by notice in the national *Government Gazette*, must determine—

- (a) a uniform interest rate applicable to loans granted out of a Revenue Fund; and
- (b) a uniform interest rate applicable to all other debts which must be paid into a Revenue Fund.

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

CHAPTER 10

FINANCIAL MISCONDUCT

Part 1: Disciplinary proceedings

81. Financial misconduct by officials in departments and constitutional institutions.— (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer wilfully or negligently—

- (a) fails to comply with a requirement of section 38, 39, 40, 41 or 42; or
- (b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.

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

82. Financial misconduct by treasury officials.— An official of a treasury to whom a power or duty is assigned in terms of section 10 or 20 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

83. Financial misconduct by accounting authorities and officials of public entities.— (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently—

- (a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or
- (b) makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

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

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

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

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

85. Regulations on financial misconduct procedures.— (1) The Minister must make regulations prescribing—

- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General, including—
 - (i) particulars of the alleged financial misconduct; and

- (ii) the steps taken in connection with such financial misconduct;
 - (b) matters relating to the investigation of allegations of financial misconduct;
 - (c) the circumstances in which the National Treasury or a provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;
 - (d) the circumstances in which a disciplinary board which hears a charge of financial misconduct must include a person whose name appears on a list of persons with expertise in state finances or public accounting compiled by the National Treasury;
 - (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor-General; and
 - (f) any other matters to the extent necessary to facilitate the object of this Chapter.
- (2) A regulation in terms of subsection (1) may—
- (a) differentiate between different categories of—
 - (i) accounting officers;
 - (ii) accounting authorities;
 - (iii) officials; and
 - (iv) institutions to which this Act applies; and
 - (b) be limited in its application to a particular category of accounting officers, accounting authorities, officials or institutions only.

Part 2: Criminal proceedings

86. Offences and penalties.— (1) An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.

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

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

CHAPTER 11

ACCOUNTING STANDARDS BOARD

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

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

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

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

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

89. Functions of Board.— (1)The Accounting Standards Board must—

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

- (i) departments;
- (ii) public entities;
- (iii) constitutional institutions;
- (iv) municipalities and boards, commissions, companies, corporations, funds or other entities under the ownership control of a municipality; and
- (v) Parliament and the provincial legislatures;

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

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

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

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

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

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

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

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

90. Powers of Board.— The Accounting Standards Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to—

(a) determine its own staff establishment and appoint employees to posts on its staff establishment;

(b) obtain the services of any person or entity to perform any specific act or function;

(c) confer with any person or entity;

(d) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;

(e) insure itself against any loss, damage, risk or liability;

(f) perform legal acts, or institute or defend any legal action in its own name;

(g) do research and publish reports; and

(h) do anything that is incidental to the exercise of any of its powers.

91. Regulations on accounting standards of Board.— (1)The Minister, after consulting the Auditor-General, may make regulations—

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

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

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

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

CHAPTER 12

MISCELLANEOUS

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

93. Transitional provisions.— (1) Anything done in terms of a provision of the Exchequer Act, 1975 (Act No. 66 of 1975), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

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

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

(4) The provisions of the Revenue Funds Interim Arrangements Act, 1997 (Act No. 95 of 1997), despite the fact that they have lapsed, must be regarded as forming part of this Act until 1 April 2000.

94. Repeal of legislation.— The legislation mentioned in Schedule 6 is repealed to the extent specified in the third column.

95. Short title and commencement.— This Act is called the Public Finance Management Act, 1999, and takes effect on 1 April 2000 except—

- (a) Chapter 11 and section 93 (4), which take effect on the date of publication of this Act; and
- (b) those provisions determined by the Minister by notice in the national *Government Gazette*, which will take effect on a date determined in the notice, but which may not be a date later than 1 April 2003.

SCHEDULE 1

CONSTITUTIONAL INSTITUTIONS

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

SCHEDULE 2

MAJOR PUBLIC ENTITIES

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

SCHEDULE 3

OTHER PUBLIC ENTITIES

Part A: National Public Entities

1. Accounting Standards Board
2. Agricultural Credit Board
3. Agricultural Research Council
4. Air Services Licensing Council
5. Board on Tariffs and Trade
6. Competition Board
7. Certification Council for Technikon Education
8. Commission for Conciliation, Mediation & Arbitration
9. Compensation Board
10. Council for Geoscience
11. Council for Mineral Technology (Mintek)

12. Council for Nuclear Safety
13. Council for Scientific and Industrial Research
14. Financial Services Board
15. Human Sciences Research Council
16. Judicial Services Commission
17. Legal Aid Board
18. National Agriculture Marketing Council
19. National Economic, Development and Labour Council
20. National Electricity Regulator
21. National Film Board
22. National Housing Board
23. National Housing Finance Corporation
24. National Monuments Council
25. National Parks Board
26. National Road Fund
27. National Small Business Council
28. National Youth Commission
29. Road Accident Fund
30. SA Bureau of Standards
31. SA Certification Council
32. SA Civil Aviation Authority
33. SA Housing Development Board
34. SA Housing Fund
35. SA Housing Trust Limited
36. SA Medical Research Council
37. SA Qualifications Authority
38. SA Revenue Service
39. SA Road Board
40. SA Road Safety Council
41. SA Telecommunications Regulatory Authority
42. SA Tourism Board
43. State Information Technology Agency
44. Unemployment Insurance Fund
45. Wage Board
46. Water Research Commission
47. Any subsidiary or entity under the ownership control of the above public entities

Part B: National Government Business Enterprises

1. Albaniekus Waterraad
2. Bala-Bala Farms (Pty) Ltd
3. Bloem Water
4. Bosveld Waterraad
5. Goudveld Water
6. Iniala Farms (Pty) Ltd
7. Kalahari-Oos Waterraad
8. Kalahari-Wes Waterraad
9. Karos-Geelkoppen Waterraad
10. Khula Enterprises
11. Lanok (Pty) Ltd
12. Magalies Water
13. Mhlathuze Water
14. Mjindi Farming (Pty) Ltd

15. Mpendle-Ntambanana Agricultural Company (Pty) Ltd
16. Namakwa Water
17. Ncera Farms (Pty) Ltd
18. Noord Transvaal Water / Meetse
19. Ntsika Enterprises
20. Overberg Water
21. Pelladrift Water
22. Phalaborwa Water
23. Rand Water Board
24. SA Rail Commuter Corporation Limited
25. Umgeni Water Board
26. Any subsidiary or entity under the ownership control of the above public entities

Part C: Provincial Public Entities

Eastern Cape:

1. Centre for Investment and Marketing in the Eastern Cape
2. Eastern Cape Agricultural Bank
3. Eastern Cape Appropriate Technology Unit
4. Eastern Cape Arts Council
5. Eastern Cape Consumer Affairs Court
6. Eastern Cape Development Corporation
7. Eastern Cape Development Tribunal
8. Eastern Cape Gambling and Betting Board
9. Eastern Cape Liquor Board
10. Eastern Cape Local Road Transport Board
11. Eastern Cape Museums
12. Eastern Cape Provincial Housing Board
13. Eastern Cape Provincially Aided Libraries
14. Eastern Cape Regional Authorities
15. Eastern Cape Socio-Economic Consultative Council
16. Eastern Cape Tender Board
17. Eastern Cape Tourism Board
18. Eastern Cape Township Board

Free State:

1. Free State Mangaung Nursing College
2. Free State Rural Foundation
3. Free State Rural Strategy Unit
4. Free State Liquor Board
5. Free State Gambling and Gaming Board
6. Free State Tender Board
7. Free State Tourism Board
8. Free State Youth Commission

Gauteng:

1. Gauteng Economic Development Agency
2. Gauteng Gambling Board
3. Gauteng Tourism Authority
4. Gauteng Consumer Affairs Court
5. Gauteng Development Tribunal
6. Gauteng Education and Training Board
7. Gauteng Municipal Demarcation Board
8. Gauteng Provincial Housing Board
9. Gauteng Services Appeal Board

10. Gauteng Townships Board

KwaZulu-Natal:

1. KwaZulu-Natal Appeals Tribunal
2. KwaZulu-Natal Development & Services Board
3. KwaZulu-Natal Development Tribunal
4. KwaZulu-Natal Gambling Board
5. KwaZulu-Natal House of Traditional Leaders
6. KwaZulu-Natal Monuments Council
7. Natal Sharks Board
8. KwaZulu-Natal Private Townships Board
9. KwaZulu-Natal Town and Regional Planning Commission
10. KwaZulu-Natal Townships Board
11. KwaZulu-Natal Provincial Peace Committee
12. KwaZulu-Natal Tender Board
13. KwaZulu-Natal Tourism Authority
14. KwaZulu-Natal Liquor Board
15. KwaZulu-Natal Conservation Services
16. KwaZulu-Natal Local Roads Transportation Board
17. KwaZulu-Natal Marketing Initiative
18. KwaZulu-Natal Economic Council
19. KwaZulu-Natal Taxi Task Team
20. KwaZulu-Natal International Airport Development Initiative
21. S.A. Life Saving
22. Natal Trust Fund
23. Natal Arts Trust

Mpumalanga:

1. Mpumalanga Gambling Board
2. Mpumalanga Housing Board
3. Mpumalanga Parks Board
4. Mpumalanga Tender Board

Northern Cape:

1. Northern Cape Economic Development Unit
2. Northern Cape Gambling Board
3. Northern Cape Housing Board
4. Northern Cape Liquor Board
5. Northern Cape Local Transportation Board
6. Northern Cape Provincial Tender Board
7. Northern Cape Tourism Authority
8. Northern Cape Youth Commission

Northern Province:

1. Northern Province Agricultural and Rural Development Corporation
2. Northern Province Appeal Tribunals
3. Northern Province Development Tribunals
4. Northern Province Panel of Mediators
5. Northern Province Planning Commission
6. Northern Province Provincial Tender Board
7. Northern Province Tourism Board
8. Northern Province Gaming Board
9. Northern Province Liquor Board
10. Northern Province Local Business Centres

11. Northern Province Housing Board
12. Northern Province Investment Initiative
13. Gateway International Airport

North West:

1. NW Agricultural Services Corporation
2. NW Arts Council
3. NW Communication Service
4. NW Mmabana Cultural Foundation
5. NW Ombudsman
6. NW Gambling Board
7. NW Tender Board
8. NW Parks and Tourism Board
9. NW Housing Corporation

Western Cape:

1. WC Investment and Trade Promotion Agency
2. WC Provincial Tender Board
3. WC Tourism Board
4. WC Gambling and Racing Board
5. WC Housing Development Board
6. WC Liquor Board
7. WC Provincial Development Council

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

Part D: Provincial Government Business Enterprises

Entity:

1. Algoa Bus Company
2. Mayibuye Transport Corporation
3. Free State Agri-Eco (Pty) Ltd
4. Free State Development Corporation
5. KwaZulu-Natal Finance & Investment Corporation
6. KwaZulu-Natal Mjindi Farming (Pty) Ltd
7. Mpumalanga Development Corporation
8. Mpumalanga Finance Corporation
9. NW Development Corporation
10. Natal Trust Farms (Pty) Ltd
11. Northern Province Development Corporation

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

SCHEDULE 4

EXCLUSIONS FROM REVENUE FUNDS

(In terms of section 13 (1) or 22 (1))

[Heading substituted by s. 46 of Act No. 29 of 1999.]

1. SA Schools Act (covering school fees)

SCHEDULE 5

DIRECT CHARGES AGAINST NATIONAL REVENUE FUND

Payments in terms of the following Acts:

1. Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (Covering the President's salary and the salaries of members of Parliament sections 2 (7) and 3 (7));
2. Remuneration and Allowances of Deputy Presidents, Ministers and Deputy Ministers Act, 1994 (Act 53 of 1994) (Covering the salary of the Deputy President section 4 (a));
3. Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989) (Covering salaries and allowances of Judges and Judges seconded to governments of other countries in terms of section 2).

SCHEDULE 6
REPEAL OF LEGISLATION
(Section 87)

No. and year of Act	Short title	Extent of repeal
(a) Act No. 66 of 1975	Exchequer Act, 1975	The whole, except sections 28, 29, 30
Act No. 106 of 1976	Financial Arrangements with the Transkei Act, 1976	The whole
Act No. 93 of 1977	Financial Arrangements with Bophuthatswana Act, 1977	The whole
Act No. 105 of 1979	Financial Arrangements with Venda Act, 1979	The whole
Proclamation No. R.85 of 1968	South West Africa Constitution Act, 1968 (Act No. 39 of 1968)	Part 3
Act No. 67 of 1980	Railways and Harbours Acts Amendment Act, 1980	Section 19
Act No. 29 of 1981	Railways and Harbours Acts Amendment Act 1981	Section 21
Act No. 118 of 1981	Financial Arrangements with Ciskei Act, 1981	The whole
Act No. 100 of 1984	Exchequer and Audit Amendment Act, 1984	The whole
Act No. 9 of 1989	Legal Succession of the South African Transport Services Act, 1989	Schedule 2 Part 6 of the act insofar as it relates to the Exchequer Act, 1975
Act No. 120 of 1991	Finance Act, 1991	Sections 14, 15 and 16
Act No. 96 of 1992	Part Appropriation Acts Abolition Act, 1992	The whole
Act No. 69 of 1993	Exchequer Amendment Act, 1993	The whole
Act No. 123 of 1993	Finance Act, 1993	The whole
Act No. 142 of 1993	Exchequer Second Amendment Act, 1993	The whole
Act No. 182 of 1993	Exchequer Third Amendment Act, 1993	The whole
Act No. 41 of 1994	Finance Act, 1994	Sections 17 and 18
(b) Act No. 93 of 1992	Reporting by Public Entities Act, 1992	The whole
(c) Act No. 66 of 1975	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Transkei
Act No. 102 of 1976	Finance Act, 1976	Sections 23, 24 and 25 insofar as it is in force in the area of the former Republic of Transkei
(d) Act No. 29 of 1992 (Bophuthatswana)	Exchequer Act, 1992	The whole
Act No. 16 of 1993 (Bophuthatswana)	Exchequer Amendment Act, 1993	The whole
(e) Act No. 66 of 1975	Exchequer and Audit Act, 1975	The whole insofar as it is in force in the area of the former Republic of Venda
Act No. 111 of 1977	Finance Act, 1977	Sections 9, 10 and 11 insofar as it is in force in the area of the former Republic of Venda
Act No. 94 of 1978	Finance Act, 1978	Sections 12, 13 and 14 insofar as it is in force in the area of the former Republic of Venda
Proclamation No. R.85 of 1979	Exchequer and Audit Proclamation	Sections 16 and 17 insofar as it is in force in the area of the former Republic of Venda
Act No. 21 of 1983 (Venda)	Exchequer and Audit Amendment Act, 1983	The whole
Act No. 18 of 1987 (Venda)	Exchequer and Audit Amendment Act, 1987	The whole
Act No. 28 of 1989 (Venda)	Exchequer and Audit Amendment Act, 1989	The whole
Proclamation No. 25 of 1993 (Venda)	Exchequer and Audit Amendment Act, 1993	The whole
(f) Act No. 28 of 1985 (Ciskei)	Exchequer and Audit Act, 1985	The whole