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PROVINCIAL NOTICE

OFFICE OF THE PREMIER

PROVINCE OF THE EASTERN CAPE

No. 1

14 September 1994

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:—

No. 1 of 1994(E.C.): Provincial Exchequer Act, 1994(Eastern Cape)

ACT

To provide for the regulation of the collection, receipt, control, custody, custody and issue of State moneys and the receipt, custody and control of other State property; the duties and powers of the Treasury; the granting of guarantees, indemnities and securities; and matters connected therewith.

(Signed and assented to by the Premier on 14 September 1994)

BE IT ENACTED by the Provincial Legislature of the Province of the Eastern Cape, as follows:—

Definitions

1. (1) In this Act and any regulation and instruction issued in terms thereof, unless the context otherwise indicates—

“accounting officer” means a person referred to in sections 17 and 18;

“adjustments estimate” means an estimate of expenditure from the Revenue Fund submitted to the Provincial Legislature in respect of expenditure on services of the Province and which are confined to—

- (a) the shifting of funds between and within votes;
- (b) reappropriation of money which was appropriated in the preceding financial year, but was not spent;
- (c) appropriation of money for services of the Province for which no or insufficient moneys have been appropriated in the relevant financial year and which may only be appropriated—
 - (i) from money obtained from the sale of assets of the Province;
 - (ii) as a result of an authorisation issued under section 7;
 - (iii) in respect of expenditure already announced by the responsible Member in his speech during the tabling of the Appropriation Act in the Provincial Legislature; or
 - (iv) in respect of expenditure regarded as being unforeseen and unavoidable by the Treasury; or
- (d) any other change or adjustment to an Appropriation Act which applies in the relevant financial year and which the Treasury deems necessary; and

(e) additional conditional and unconditional allocation by Parliament;

"Appropriation Account" means an account mentioned in section 16;

"Appropriation Act" means an Act by which the estimates of expenditure or adjustments estimate is appropriated as a charge against the Revenue Account approved by the Provincial Legislature;

"Auditor-General" means the person appointed as such in terms of section 191(2) of the Constitution;

"Bank" means a bank mentioned in the Banks Act, 1990 (Act No. 94 of 1990);

"credit" means an allocation of an amount of money in the Paymaster-General's Account to an accounting officer;

"department" means a department which has been established in terms of the law for the Province;

"estimates of expenditure" means an estimate of expected expenditure from the Revenue Fund on the services of the Province during a financial year which are submitted to the Provincial Legislature and which contain particulars of the purposes for which moneys appropriated in an Appropriation Act shall be utilized and includes any estimates of supplementary expenditure on such services during that financial year which it is deemed necessary to provide for after the first-mentioned estimate has been submitted to the Provincial Legislature, but before it has been approved;

"Exchequer Account" means the account mentioned in section 3(1);

"financial year" means the period extending from 1 April in any year to 31 March in the next succeeding year;

"head of department" means an officer appointed in terms of the law as the head of a particular department in the Province;

"Instruction" means an instruction issued by the Treasury in terms of section 26;

"National Treasury" means the national financial authority in the Public Service which is vested in the Department of State Expenditure mentioned in the Public Service Act, 1994, and whose powers in relation to any matter are exercised by the Minister of Finance or an officer in that department who, by virtue of a division of work in that department, deals with that matter;

"Paymaster-General's Account" means the account mentioned in section 9(1);

"Provincial debt" means money borrowed by the Province in terms of any law or which accrued to the Province in terms of section 239 of the Constitution and which is to be repaid from the Revenue Fund;

"Revenue" means all moneys received whether directly or as transfer payments from the National Revenue Fund by way of taxes, imposts or duties and all casual and other receipts of the Province, whatever

the source, which may be appropriated by the Provincial Legislature, and includes moneys borrowed in terms of the provisions of any law, but does not include the amount of any fine not exceeding R50 imposed upon any person by any court of law, in so far as such amount has not been paid, or revenue accruing to the National Revenue Fund or any other provincial revenue fund;

"regulation" means a regulation made by the responsible Member in terms of section 25;

"Revenue Account" means the account mentioned in section 2;

"Revenue Fund" means the fund established by section 159 of the Constitution;

"standard interest rate" means the rate of interest determined in terms of a national Exchequer Act;

"State moneys" means—

- (a) all Revenue; and
- (b) all other moneys, whatever, received or held by an accounting officer for, or on account of, the Province;

"State property" means any property of the Province, the disposal of which is not governed by any other law;

"statutory body" means any local authority, board, fund, institution, company, corporation or other organization established or constituted by or under any law in terms of which funding may be provided from the Revenue Account or the accounts of which are to be audited by the Auditor-General;

"the Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"the responsible Member" means the member of the Executive Council of the Province responsible for financial matters;

"Treasury" means the provincial financial authority in the Province which is vested in the department responsible for financial matters, and whose powers with regard to any matter are exercised by the responsible Member or an officer in that department who, by virtue of a division of work in that department, deals with that matter;

"trust money" means money kept by an accounting officer or other person in the service of the Province on behalf of a person or body, which money is not State money;

"trust property" means property kept by an accounting officer or other person in the service of the Province on behalf of a person or body, which property is not State property;

"vote" means a vote shown in a Schedule to an Appropriation Act.

(2) A reference in any law to the State Revenue Fund pertaining to a power assigned to a province or vesting in a province, shall be deemed to be a reference to the Revenue Fund in so far as that power is assigned to or vests in the Province.

CHAPTER I

REVENUE, EXPENDITURE AND ACCOUNTING SYSTEM

Account of Revenue Fund

2. The Treasury shall make provision in its books in respect of the Revenue Fund for a Revenue Account which shall be credited with all revenue accruing to it in terms of this Act or any other law, and from which shall be defrayed all expenditure and be paid any amounts with which it is charged in terms of this Act or any other law.

Exchequer Account

3. (1) The Treasury shall maintain at a Bank an account, titled "the Account of the Exchequer of the Province", into which shall, subject to the provisions of subsection (2)(a), be deposited all revenue.

(2) (a) The Treasury shall appoint principal receivers of revenue in respect of all provincial revenue received by the Province.

(b) The principal receivers of revenue contemplated in paragraph (a) shall each cause the revenue of his office received from time to time, less the amount of any drawbacks and other refunds, to be deposited in the Exchequer Account.

(c) Such deposits shall be made on each appropriate working day.

(3) The Bank shall on each appropriate working day render to the Treasury, in such form as the Treasury may determine, returns of revenue deposited in the Exchequer Account.

(4) The Treasury may utilize any moneys in the Exchequer Account for the defrayment of expenditure chargeable to the account mentioned in section 2.

(5) The Treasury shall, subject to the provisions of this Act, ensure that there shall at all times be sufficient moneys in the Exchequer Account for transfer in accordance with section 9(1).

Appropriation of moneys in Revenue Fund, and estimates of expenditure and revenue

4. (1) The moneys in the Revenue Fund shall be appropriated by the Provincial Legislature as a charge against the Revenue Account by an Appropriation or other Act for the requirements of the Province: Provided that until such time as provision has been made in an Appropriation Act for such requirements during a financial year, such moneys shall be deemed to have been appropriated by an Act for such requirements, subject to the proviso to subsection (2).

(2) Issues by virtue of the proviso to subsection (1) shall be deemed to be issues by virtue of the Appropriation Act for the financial year in question, and as a charge against the Revenue Account: Provided that of the amount voted by the Provincial Legislature by an Appropriation Act for the immediately preceding financial year not more than —

(a) forty-five per cent thereof shall be appropriated for the first four months; and

- (b) ten per cent thereof shall be appropriated in respect of each of the following months; and
 - (c) the total thereof is exceeded in all,
- in respect of these issues.

(3) Moneys deemed to have been appropriated as contemplated in the proviso to subsection (1) shall only be utilized for services in respect of which expenditure was authorised by an Appropriation Act during the immediately preceding financial year, or in respect of which some other authorisation by another Act exists.

(4) When applying this section, where—

- (a) no Appropriation Act for the immediately preceding financial year has been prepared; or
- (b) certain functions (hereinafter referred to as additional functions) were imposed on the Province after an Appropriation Act had been passed for the immediately preceding financial year,

the total amount on which calculations are made for the purpose of subsection (1) shall in respect of paragraph (a) be an amount determined by the responsible Member and in respect of paragraph (b) the total amount of the Appropriation Act of the immediately preceding financial year together with the costs of such additional functions for a full year, and such additional functions shall for the purposes of subsection (3) be deemed to be part of the relevant Appropriation Act.

(5) The responsible Member—

- (a) shall for every financial year, in a form determined by the Minister responsible for national financial matters, submit to the Provincial Legislature estimates of revenue and expenditure to be defrayed from the Revenue Account; and
- (b) may submit to the Provincial Legislature an adjustments estimate to be so defrayed.

Duration of Appropriation Act, and expenditure in financial year

5. (1) An Appropriation Act shall not be construed as authorizing the utilization of moneys appropriated therefor in a financial year other than the financial year to which it expressly relates.

(2) Subject to the provisions of subsection (3) and section 7, expenditure shall in each financial year be incurred in accordance with standing statutory appropriations and, in respect of each vote, in accordance with the main divisions thereof, the particulars of which shall be contained in the estimates of expenditure and the adjustments estimate.

(3) Expenditure on a service of which no or insufficient provision has been made in an Appropriation Act, shall not be brought to account as a final debit against a vote, unless—

- (a) in the case of insufficient provision, a saving under any main division of the vote concerned is being applied towards such expenditure, unless the Treasury directs otherwise; or
- (b) the responsible Member has granted written authority therefor beforehand in terms of section 7.

Column 2 items

6. (1) The amounts appearing in "Column 2" of a Schedule to an Appropriation Act in respect of any vote shall, subject to the provisions of section 7(1)(b)(ii), not be exceeded, and savings thereon may, with the approval of the responsible Member, be applied towards the defrayment of any other expenditure for which insufficient appropriation has been made under that vote.

(2) An amount appearing in "Column 2" of a Schedule to an Appropriation Act in respect of any vote, may be increased with such a portion of the moneys appropriated for the Vote: Improvement of conditions of service of the Province, as the accounting officer in consultation with the Treasury may determine.

Authority by responsible Member for utilization of moneys in certain circumstances

7. (1) Notwithstanding the provisions of sections 4 and 6, the responsible Member may grant authority for moneys in the Revenue Fund to be utilized during a financial year—

- (a) to defray expenditure of an exceptional nature which has not been provided for in an Appropriation Act and which cannot without serious prejudice to the public interest be postponed until appropriation therefor can be made by the Provincial Legislature; or
- (b) to defray—
 - (i) expenditure in connection with an expected excess on a vote which cannot, without serious prejudice to the public interest, be postponed until appropriation therefor can be made by the Provincial Legislature; and
 - (ii) expenditure in connection with an expected excess of amounts which appear in "Column 2" of a Schedule to an Appropriation Act:

Provided that the total amount in respect of which authority may be granted in terms of this subsection shall not at any time exceed an amount equal to two per cent of the total amount appropriated by the then current Appropriation Act, or which is available by virtue of the proviso to section 4(1).

(2) Steps shall be taken, not later than during the next ensuing sitting of the Provincial Legislature, for the appropriation of any amounts which have been or will be utilized in terms of subsection (1).

(3) The authority contemplated in subsection (1) shall be granted only if it complies with the criteria stated in the definition of "adjustments estimate" in section 1(1).

Power of Treasury to limit or suspend incurring of expenditure

8. (1) Notwithstanding anything to the contrary contained in any law, including any law whereby money is appropriated for any statutory body, fund or account, the Appropriation Act, or an authority granted in

terms of section 7, shall be construed as merely indicating the maximum amount which may be utilized for the service or purpose concerned, and the Treasury may withhold or suspend the disbursement of moneys which have been appropriated or in respect of which authority has been granted in terms of section 7(1), if in the opinion of the Treasury circumstances make such withholding or suspension desirable.

(2) The Treasury shall keep a record of every withholding or suspension in terms of subsection (1) and shall without delay notify the accounting officer and the Auditor-General of every such withholding or suspension.

(3) Any amount the payment of which was in terms of subsection (1) withheld or suspended may be utilized during the financial year concerned for a purpose approved by the Treasury.

(4) The Treasury shall keep a record, and without delay notify the Auditor-General, of every approval granted in terms of subsection (3).

Account of Paymaster-General

9. (1) In addition to the Exchequer Account, the Treasury shall maintain at the Bank an account entitled the Account of the Paymaster-General and may cause so much of any moneys—

- (a) appropriated by law;
- (b) which may, by virtue of the provisions of section 7, be utilized for any purpose; or
- (c) deemed to be appropriated by law, as have been requisitioned in terms of subsection (3).

to be transferred from the Exchequer Account to the Paymaster-General's Account.

(2) (a) The Treasury shall grant to an accounting officer, on a requisition by him, and out of the moneys in the Paymaster-General's Account, credits out of which disbursements for the services for which he or she is responsible, shall be made by him or her.

(b) The Treasury may limit the granting of credits referred to in paragraph (a) to the amounts which, in its opinion, are required for current payments in respect of the service or purpose for which it may be utilized.

(3) The Treasury shall not grant a credit in respect of an amount payment of which was withheld or suspended in terms of section 8(1), unless an approval has been granted in terms of section 8(3).

(4) An accounting officer shall keep account of all credits granted to him or her in terms of subsection (2) as well as all disbursements therefrom.

(5) An accounting officer may, in addition to State moneys, deposit other moneys for which he or she is accountable in the Paymaster-General's Account and may make disbursements from that account.

(6) In regard to the Paymaster-General's Account the Treasury shall maintain for each accounting officer an account of all credits, deposits, disbursements and withdrawals.

(7) An accounting officer shall as soon as is practicable after his or her accounts for any financial year have been closed, surrender to the Treasury, for redepositing in the Exchequer Account, any unexpended moneys in respect of which he or she received credits in terms of subsections (2) and (8), and the Treasury shall credit therewith the account in the Revenue Fund which was charged with the anticipated expenditure concerned.

(8) If it appears after 31 March of any financial year that the expenditure by an accounting officer on services in that financial year may possibly exceed the amount of the credits granted to him or her by the Treasury in terms of subsection (2), he or she shall as soon as possible, provided appropriate funds for that financial year are still available under the vote concerned, requisition the Treasury for a credit to cover such expected excess, and the Treasury may, in the manner prescribed in subsections (1) and (2), grant the necessary credit and cause the moneys in question to be transferred in the following financial year.

(9) An accounting officer shall limit the amount of his or her requisitions on the Treasury for credits to the amounts which in his or her opinion are essential to meet his current monthly disbursements, and the Treasury shall, subject to the provisions of section 8(1), grant credits to the extent of such amounts and to such extent only.

(10) The Treasury shall limit the amount of its requisitions on the National Treasury for credits in respect of moneys accruing to it in terms of section 155(2)(c) of the Constitution as a charge against the National Revenue Account, to amounts necessary to defray its current expenditure, and the National Treasury shall grant credits for such amounts.

(11) The Treasury may temporarily utilise moneys in the Paymaster-General's Account, which in its opinion are available therefore—

- (a) to grant advance to an accounting officer on such conditions as it may determine;
- (b) to make transfers to the Exchequer Account for the purposes of the financing of anticipated deficits in that account, and moneys so transferred shall be deemed to be moneys borrowed in accordance with the provisions of a law; and
- (c) for temporary investment on such conditions as it may determine.

Financial arrangements in respect of Provincial Legislature

10. (1) The control of the expenditure and the appropriation of moneys for the services of the Provincial Legislature shall be vested in the Speaker of the Provincial Legislature (hereinafter in this section referred to as the Speaker), and his authorisation for such expenditure and appropriation of moneys, as well as receipts issued by the accounting officer referred to in subsection (2) on his behalf, with reference to all matters affecting those services shall, notwithstanding anything to the contrary contained in this Act or any other law, but subject to the provisions of this section, be taken to be in all respects good, valid and effectual.

(2) Subject to the provisions of any other law and unless otherwise directed by the Speaker, the Secretary to the Provincial Legislature (hereinafter in this section referred to as the Secretary) shall be the

accounting officer charged with the collection, receipt, custody and payment of moneys for the services of the Provincial Legislature, as well as the receipt, custody and control of property acquired for the administration of the Provincial Legislature, and the Secretary shall keep proper accounts of all moneys received and paid out by him or her, and of all his or her financial transactions.

(3) The Secretary shall requisition the moneys required for the services of the Provincial Legislature from the Treasury and, notwithstanding anything to the contrary contained in section 9, the Treasury shall, on receipt of such a requisition by the Secretary, pay to the said Secretary the moneys appropriated for the services of the Provincial Legislature, or which, by virtue of the provisions of section 7, may be utilized therefor, or are deemed to be appropriated therefor by law, and the Treasury shall for that purpose grant the said Secretary credits.

(4) The Secretary shall maintain at a Bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), and approved by the Speaker an account into which shall be deposited all moneys received by him or her and from which all payments shall be made by him or her, and the Secretary may authorise a person or persons in the employ of the Provincial Legislature to sign the necessary cheques for the said payments.

(5) Notwithstanding anything to the contrary contained in any other law, the Speaker may approve that a saving under a main division of the vote "Provincial Legislature" in an Appropriation Act may be applied towards the defrayment of excess expenditure under another main division, or of expenditure under a new main division of that vote: Provided that amounts appearing in "Column 2" of a schedule to such an Appropriation Act in respect of the said vote shall not be exceeded, and the savings thereon shall not be applied for a purpose other than that for which the money was granted as indicated in such schedule.

(6) At the end of each financial year the Secretary shall cause statements of account to be prepared showing in detail the moneys received by him or her, and the expenditure incurred by him or her during the financial year in question.

(7) At the end of each financial year the Secretary shall surrender to the Treasury for redepositing in the Exchequer Account, any unexpended balance of moneys received from the Treasury.

(8) The provisions of sections 7, 16, 21 and 22 of this Act and no other provisions thereof, shall *mutatis mutandis* apply in respect of the services, vote, accounts, moneys and property of the Provincial Legislature and in such application—

- (a) any reference in sections 16, 21 and 22 to an accounting officer shall be deemed to be a reference to the Secretary;
- (b) any reference in section 21(1)(c) to the Treasury shall be deemed to be a reference to the Speaker;
- (c) any reference in section 22 to the responsible Member and the Treasury shall be deemed to be a reference to the Speaker; and
- (d) any reference in section 22 to a person who is or was in the employ of the Province, shall be deemed to be a reference to a person who is or was in the employ of the Provincial Legislature.

(9) The accounts of the Provincial Legislature shall, subject to the provisions of subsection (1), be investigated, examined and audited by the Auditor-General, and in the carrying out of such an audit the provisions of sections 5(1), 5(7)(a) and (b) and 5(8), 6(1)(a) and (2), 7 and 14(1) of the Auditor-General Act, 1989 (Act No. 52 of 1989), shall *mutatis mutandis* apply, and in such application the references in section 5(1) to an accounting officer and to persons in the public service shall be deemed to be references to the Secretary and to persons in the employ of Provincial Legislature, respectively.

Powers of Treasury to utilise moneys in the Exchequer Account for certain purposes

11. (1) The Treasury may utilize available moneys in the Exchequer Account—

- (a) for temporary investment in the Republic on such conditions as it may determine;
- (b) for the payment of legitimate claims arising from a guarantee, an indemnity or a security furnished by or accruing to the Province; and
- (c) for the refund of money inadvertently or incorrectly paid into the Exchequer Account.

(2) The moneys utilized under subsection (1) for specific purposes, shall be deemed to have been appropriated for such purposes.

(3) The member of the Executive Council responsible for the department concerned in a matter referred to in section 23 shall, within 14 days of the date of the payment contemplated in subsection (1)(b) or within such extended period as the Provincial legislature may by resolution authorise, table a statement reflecting the utilization of moneys contemplated in the said subsection: Provided that if the Provincial legislature is not then sitting such statement shall be tabled within 14 days of its next ensuing sitting.

Authority for opening of bank accounts

12. (1) An account in respect of Revenue may only be opened on the written authority of the Treasury at a Bank and, where an account has been so opened, the said Bank shall, subject to section 157(2) of the Constitution, not allow the account to be overdrawn.

(2) The Treasury shall, in consultation with the South African Reserve Bank, annually revise the allocation to a Bank of banking accounts in respect of the Exchequer Account and Paymaster-General's Account.

Establishment of trading and related accounts

13. (1) The Treasury may authorise an accounting officer to establish trading and related accounts in respect of services and goods supplied by the Province to itself or any other institution.

(2) Expenditure in respect of the supply of services and goods referred to in subsection (1), as determined by the Treasury, shall be financed from moneys in the accounts—

- (a) which have been appropriated by the Provincial Legislature;

- (b) which, notwithstanding anything to the contrary in this Act or any other law contained, have been received in payment for services and goods referred to in subsection (1);
- (c) which have been obtained from the sale of redundant and unserviceable supplies related to the supply of the services and goods in question;
- (d) which have been obtained with the concurrence of the Treasury from any other source.

(3) The Revenue Account shall be credited with any profit at the end of a financial year and any loss shall be made good from appropriated moneys.

Systems of bookkeeping and accounting

14. The Treasury may, after consultation with the Auditor-General—

- (a) prescribe particular systems of bookkeeping and accounting which have not been prescribed by the National Treasury in terms of a National Exchequer Act, which accounting officers shall follow; and
- (b) give guidance, in such manner as it deems necessary, to accounting officers in connection with the systems prescribed by the National Treasury and Treasury.

Accounting for Exchequer Account, and preparation of statements

15. (1) The Treasury shall account for the Exchequer Account and shall keep such accounts and records as are necessary to exercise proper control over the Revenue Fund.

(2) The Treasury shall as soon as practicable after the end of each month, cause statements to be published in the *Provincial Gazette* showing the receipts into, and transfers from, the Exchequer Account during the period from the first day of the relevant financial year to the end of that month as well as the balances in the Exchequer Account at the beginning and at the end of such period.

(3) As soon as practicable after the accounts in respect of any financial year have been closed, but in any case within five months after the end of a financial year, the Treasury shall prepare statements, as prescribed by the National Treasury, of—

- (a) the Exchequer Account;
- (b) the Revenue Account;
- (c) the Paymaster-General's Account;
- (d) the Provincial debt and the amount of debt created and redeemed during the financial year;
- (e) the interest and dividends received in the accounts of the Revenue Fund and the interest paid on the Provincial debt;
- (f) all other moneys controlled by the Treasury.

(4) The Treasury shall within the period referred to in subsection (3), also prepare statements, in support of the Revenue Account in respect of the financial year in question, of the receipts under the various headings shown in the estimates of revenue and of the transfers from the Exchequer Account of each of the votes shown in any Appropriation Act for that year.

(5) The Treasury shall transmit the statements referred to in subsections (3) and (4) to the Auditor-General for examination as soon as they have been prepared.

Appropriation Accounts

16. (1) An accounting officer shall as soon as possible, but not later than four months after the end of a financial year, prepare and transmit to the Auditor-General for examination, and Appropriation Account in respect of such year and in respect of each vote under his or her control and shall at the same time send a copy thereof to the Treasury: Provided that the Auditor-General may, in any case where in his or her opinion it is justifiable, grant extension for the submission of the required account, for such period as in his or her opinion is necessary for the completion thereof.

(2) In an Appropriation Account an accounting officer shall in respect of each main division of a vote specify—

- (a) on the receipt side thereof the amount appearing for the financial year in question—
 - (i) in the estimate of expenditure and adjustment estimate; and
 - (ii) authorisations granted in terms of section 7 which have not been appropriated in terms of subsection (2) of that section: Provided that a clear distinction is made between the receipts referred to in subparagraph (i) and this subparagraph;
- (b) on the expenditure side thereof the amount actually expended during the same period: Provided that the amount of any advance by an accounting officer to defray expected expenditure which is not supported by acceptable expenditure vouchers, shall not be included on the expenditure side.

(3) Each Appropriation Account rendered to the Auditor-General shall be accompanied by—

- (a) explanations of the causes of variation, in excess of two per cent, between expenditure and the amount contemplated in subsection (2)(a);
- (b) an indication of the amount of any surplus to be surrendered or of any deficit;
- (c) a statement to the effect that the preceding financial year's surplus, if any, has been surrendered;
- (d) an indication of the aggregate of any balance in a suspense account which may be chargeable to the vote.

(4) Appropriation Accounts, and particulars furnished in terms of this section, shall be signed by the accounting officer.

(5) (a) Whenever a person is charged under section 18(1) with the responsibility of accounting for State moneys and State property in respect of any particular portion of a vote, the particulars relating to that portion shall be dealt with separately in the Appropriation Account in respect of the vote in question.

(b) A person referred to in paragraph (a) shall furnish the accounting officer concerned with sufficient particulars so as to enable him or her to comply with the provisions of subsections (1), (2) and (3).

Accounting officer

17. (1) There shall be an accounting officer for each vote who shall be charged with the responsibility of accounting for all State moneys received, all payments made by him or her and the acquisition, receipt, custody and disposal of all State property: Provided that up to and until 31 March 1995, the Director-General, appointed in terms of the Public Service Act, 1994, for the Province, shall be the accounting officer for all votes.

(2) An accounting officer shall exercise the powers conferred upon him or her and perform the duties assigned to him or her by law, by financial regulations, by Treasury Instructions or by the Treasury.

(3) Unless otherwise directed by the Treasury, the accounting officer for—

- (a) the vote or votes of a department shall be the head of the department appointed for that department;
- (b) a statutory body for which no accounting officer has been designated under the provisions of any other law, shall be the chief executive officer of such statutory body.

(4) During the absence of an accounting officer his powers shall be exercised and his duties performed by the officer acting in his place.

Responsibility of account for State moneys and State property by person who is not accounting officer

18. (1) The Treasury may, notwithstanding the provisions of section 17, charge a person who is not an accounting officer with the responsibility of account for—

- (a) State moneys received and paid out by that person;
- (b) State property acquired, received, kept or disposed of by that person, in connection with a trading and related account, established under section 13(1), or a particular portion of a vote whereof accounts are kept separately.

(2) Whenever a person is charged under subsection (1) with the responsibility of account for State moneys and State property in respect of a trading and related account or any particular portion of a vote, the Treasury may assign to such person any or all of the powers and duties referred to in section 17(2) which an accounting officer may exercise or is required to perform in respect of such trading and related account or portion of a vote.

(3) A power or duty assigned to a person under subsection (2), shall be exercised or performed by such person in respect of the said trading and related account or portion of a vote to the exclusion of the account officer responsible for the vote of which that trading and related account or portion forms part.

(4) Whenever a person referred to in subsection (1) is absent, his powers shall be exercised and his duties performed by the person acting in his place.

CHAPTER II

GENERAL FINANCIAL CONTROL

Other powers of Treasury

19. (1) Subject to the provisions of this Act and any other law, the Treasury shall have the power to—

- (a) give guidance in, and exercise control over, State moneys and other State property to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilization thereof;
- (b) direct that such expenditure charged against the Revenue Account, as it may determine, shall not be incurred without its approval having been obtained;
- (c) approve fees or other charges or the rates, scales or tariffs of fees or other charges not fixed or capable of being fixed by or in terms of any law and relating to the revenue accruing to or expenditure from the Revenue Fund, and to direct that no such fee or charge or rate, scale or tariff thereof shall be introduced before the approval of the Treasury has been obtained;
- (d) grant approval for the rendering of a free service;
- (e) grant approval for the write-off of a loss of State money and other State property;
- (f) grant approval for the variation or cancellation of contracts to the detriment of the State;
- (g) require accounting officers to submit particular inputs in respect of budget matters to it, and in respect of such inputs—
 - (i) to analyse them and make recommendations thereabout to the responsible Member;
 - (ii) to make them, or processed information thereof, available to the National Treasury on its request;
- (h) require any accounting officer to submit to it information, returns, documents, explanations and motivations in regard to any matter affecting State moneys or other State property;
- (i) grant approval for the settlement of a claim by or against the Province or for the waiver of a claim by the Province;
- (j) authorise or condone non-compliance by an accounting officer with an instruction or other written request, stipulation or condition of the Treasury in connection with any matter;

- (k) investigate, and inspect systems for the control over, and administration of, State moneys and other State property and prescribe additional systems, other than those referred to in section 14;
- (l) determine against which vote or subdivision thereof expenditure on a service should be charged;
- (m) determine the terms and conditions on which revenue due to the Province may be paid and on which State moneys may be disbursed;
- (n) approve remissions, as an act of grace, of moneys due to the Province;
- (o) approve refunds of Revenue to the Province as an act of grace;
- (p) approve payments, as an act of grace, from State money;
- (q) approve gifts of State moneys and other movable State property or the acceptance of gifts to the Province;
- (r) approve the alienation, letting or other disposal of movable State property;
- (s) afford guidance in the handling of and exercise control over all trust money and trust property temporarily deposited or left in the care of an accounting officer or other person in the service of the Province;
- (t) give guidance in the application of norms and standards prescribed by the National Treasury in respect of improvements to immovable property financed in full or in part from the Revenue Fund;
- (u) approve acceptance of sponsorships to the Province:

Provided that when the amount involved in any case contemplated in paragraph (n), (o), (p) or (q), other than any such case in connection with movable State property, exceeds R100 000 or relates to a tax, other duty or impost imposed by law, such remission, refund, payment or gift shall not be made unless moneys for that purpose have been appropriated by the Provincial Legislature: Provided further that if, in the opinion of the Provincial Treasury, the circumstances connected with the payment of any such tax, other duty or impost justify a refund as an act of grace of the whole or a portion of the amount in question, the Treasury may approve such refund, to an amount not exceeding R100 000, as a charge against the vote concerned.

(2) The Treasury may, in its discretion, approve the write off of the whole or any portion of an amount owing to the Province by a person, if it is satisfied that—

- (a) the amount is irrecoverable;
- (b) recovery of the amount would be uneconomical;
- (c) recovery of the amount would cause undue hardship to the debtor or his dependants because they are deprived of the minimum essential means of livelihood;
- (d) the assets of the debtor or of the estate of the debtor, if he or she is deceased (whether or not such assets are pledged to the State), are indispensable to his dependants or are of relatively little value, and the debtor or his estate, as the case may be, is unable to pay the amount or any portion thereof, except by the disposal of such assets and such disposal would cause undue hardship; or

- (e) it would be to the advantage of the Province to effect a settlement of its claim in question or to waive such claim.

(3) Whenever a power is conferred by any law to determine any rate, scale, tariff, fee or charge for the purposes of any revenue accruing to, or expenditure from the Revenue Fund, such a determination shall, notwithstanding the provisions of such law, not be made before the approval of the Treasury thereof has been obtained: Provided that the provisions of this subsection shall not apply to any such a determination by the Premier of the Province.

(4) Where a voucher or other proof of receipt or payment is in any way defective or has been lost or destroyed and—

- (a) the Treasury in the case of accounts of accounting officers and other persons in the service of the Province;
- (b) subject to the provisions of any other law, the executive authority of a statutory body, in the case of such accounts of such statutory body,

is satisfied with the explanation of the responsible person, the Treasury, or the executive authority of a statutory body, as the case may be, may make an order dispensing with the production of a voucher or such other proof or may make such other order as may appear just in the circumstances.

Delegation of powers of Treasury

20. (1) The Treasury may on such conditions as it may determine, delegate to an accounting officer any power conferred upon it by section 19(1), (2) or 22(5).

(2) Where the Treasury has delegated any power under subsection (1), it may authorise the accounting officer concerned to further delegate that power to the holder of any post designated by the Treasury.

(3) An accounting officer shall not be divested of any power delegated by him her or under his or her authority and may amend or withdraw any decision made in the exercise of that power.

(4) The Treasury shall not be divested of a power delegated by it or under its authority and may amend or withdraw any decision made in the exercise of such power, including a decision of an accounting officer whereby a decision contemplated in subsection (3) is amended or withdrawn.

(5) Where any power has been delegated to the holder of a post, that power may be exercised by the person who for the time being performs the functions attached to such post.

Unauthorised expenditure

21. (1) An expenditure concerned shall be unauthorised if—

- (a) a payment is made by an accounting officer without provision having been made therefor by, or by virtue of the provisions of, any law;
- (b) a payment or part of a payment on a service authorised by an Appropriation Act results in—
 - (i) the total amount appropriated for the vote concerned, regard being had to any increase referred to in section 6(2), being exceeded;

- (ii) a prohibition, by virtue of the provisions of section 5(3), on the expenditure being brought to account as a final debit; or
 - (iii) the amount shown in "Column 2" of the Schedule to an Appropriation Act in respect of a service being exceeded and an authority referred to in section 7(1)(b)(ii) has not been obtained, or an increase referred to in section 6(2) has not been made therefor;
 - (c) an accounting officer is unable to produce to the Auditor-General in respect of a payment an appropriate Treasury authority required in terms of the provisions of this Act or any other law;
 - (d) an accounting officer makes a payment inconsistent with a provision of any law.
- (2) Unauthorised expenditure contemplated in subsection (1) shall not form a charge against the Revenue Fund until—
- (a) in the case of paragraph (a), (b) or (c) of that subsection, the expenditure concerned has been authorised by law of the Provincial Legislature; or
 - (b) in the case of paragraph (d) of that subsection, the expenditure concerned has been validated by law of the Provincial Legislature.
- (3) Unauthorised expenditure or any part thereof determined by the Provincial Legislature which has not been authorised or validated as contemplated in subsection (2), shall, if the accounting officer cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorised expenditure, be recovered by the Treasury from the accounting officer.
- (4) The provisions of paragraphs (a), (c) and (d) of subsection (1) shall *mutatis mutandis* apply in respect of a statutory body unless otherwise provided by law, and for the purposes of paragraph (c) a reference to Treasury authority shall be construed as a reference also to an authority of a member of the Executive Council, or an executive authority of any other relevant authority, as the case may be.
- (5) Unauthorised expenditure referred to in subsection (4) or any part thereof determined by the Provincial Legislature shall not form a charge against a fund or account concerned until it has been authorised, validated or made available in accordance with the normal budgetary procedure applicable to the fund or account concerned: Provided that any unauthorised expenditure which has not been authorised or validated shall not be recovered from the accounting officer if he or she cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorised expenditure.

Recovery of losses and damages

22. (1) If a person who is or was in the employ of the Province and caused the Province a loss or damage because he or she—

- (a) failed to collect State moneys for the collection of which he or she is or was responsible;

- (b) is or was responsible for an irregular payment of State moneys or for a payment of such moneys not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of State moneys due to an omission to carry out his or her duties;
- (d) is or was responsible for a deficiency in, or for the destruction of, or damage to, State moneys, stamps, face-value documents and forms having a potential value, securities, equipment, stores or any other State property;
- (e) due to an omission to carry out his duties or in any other manner, is or was responsible for a claim against the Province,

the accounting officer concerned or the holder of a post designated by the Treasury shall determine the amount of such loss or damage or the amount necessary to replace State property in which there is a deficiency or which was destroyed, as prescribed by the Instructions and, subject to the provisions of subsection (5), order, by notice in writing, the said person to pay to him or her, within thirty days from the date of such notice, the amount so determined.

(2) If a person who is in the employ of the Province and who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (6) and (7), be deducted from his or her monthly salary: Provided that such deduction shall not in any month exceed one quarter of his or her monthly salary, unless such a person agrees, in writing, that a larger amount may be deducted.

(3) If a person who was in the employ of the Province and who has, in terms of subsection (1), been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, the accounting officer concerned shall, subject to the provisions of subsections (4), (6) and (7), recover such amount from the person concerned by legal process.

(4) If a person who has been ordered to pay an amount in terms of subsection (1) makes, within the period stipulated in the notice in question, an offer to pay the amount in instalments, the accounting officer, or the holder of a post designated by the Treasury, may allow payment in such instalments as he or she may consider reasonable: Provided that if the redemption of the amount in terms of the offer will not be effected within a period of 12 months, calculated from the date on which the first instalment is payable, the approval of the Treasury shall be obtained for the payment thereof over a period in excess of the period mentioned, and the Treasury may determine the other terms and conditions subject to which the amount shall be paid.

(5) If for any reason whatsoever, an accounting officer, or the holder of a post designated by the Treasury, is of the opinion that an amount determined in terms of subsection (1) should not be recovered or should be recovered in part only from the person responsible therefor, he or she may request the Treasury to exempt that person from payment of the whole or a portion of such amount, and the Treasury may in its discretion approve of the whole or a portion of such amount not being recovered.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may, within a period of thirty days from the date of such order, in writing request the accounting officer concerned, stating the grounds for his or her request, that a request as contemplated in subsection (5), be addressed to the Treasury, and if the accounting officer concerned refuses to address such a request to the Treasury or if the Treasury refuses to approve, as contemplated in the said subsection, of the whole or a portion of the amount in question not being recovered as requested, such person may within thirty days after he or she has been notified in writing of any such refusal, appeal against such refusal to the responsible Member, and the responsible Member may, in accordance with what he or she considers fair and reasonable after such further investigation as he or she may deem necessary, dismiss the appeal or order that the appellant be exempted either wholly or partly, from the payment of such amount.

(7) A person who has, in terms of subsection (1), been ordered to pay an amount may, instead of appealing to the responsible Member under subsection (6), apply within a period of thirty days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer concerned on the merits of the case that the order was rightly made or that amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

(8) If an amount is in terms of subsection (5), (6) or (7) reduced, the reduced amount shall *mutatis mutandis* be recovered in accordance with the provisions of subsections (1), (2), (3) and (4).

Guarantees in respect of loans

23. (1) If a responsible Member in the Executive Council and, if he or she is not the member of the Executive Council responsible for financial affairs, also the member of the Executive Council responsible for financial affairs, is convinced that the provisions of subsection (3) have been complied with, the said responsible Member, with the concurrence of the member of the Executive Council responsible for financial affairs, if he or she is not such responsible Member, and after the provisions of section 157(3) of the Constitution have been complied with, may, from time to time, subject to the conditions mentioned in subsection (3) and the conditions which he or she may with the concurrence of the member of the Executive Council responsible for financial affairs, if he or she is not such responsible Member, determine, including the waiver of such legal exception as he or she may deem fit, furnish a guarantee in respect of the financial obligations arising from a loan granted or to be granted by a local government or by a board or body established by or under any law, hereinafter referred to as a body corporate, situated within the Province.

(2) A guarantee which is to be furnished in terms of subsection (1) may only be considered by the responsible Member and, if he or she is not the member of the Executive Council responsible for financial affairs, also by the member of the Executive Council responsible for the financial affairs, if the application for such a guarantee is accompanied by a written recommendation for the furnishing of such a guarantee by the executive authority of the local authority or body corporate to which the guarantee is to be furnished, as the case may be.

(3) A guarantee furnished in terms of the provisions of subsection (1) must comply with the conditions that—

- (a) the proceeds of the loan so guaranteed—
 - (i) shall be employed in the public interest within the area under its jurisdiction by the local government in respect of whose loan a guarantee is to be furnished or within the area of the Province or part thereof, by the body corporate;
 - (ii) shall not be employed for the financing of current expenditure;
 - (iii) shall, in the case of a guarantee granted in respect of a loan by a local government, be employed in accordance with the provisions of any law passed in the Province covering borrowing of money by a local government; and
 - (iv) will be accounted for separately by the local government or body corporate concerned, as the case may be;
- (b) the responsible Member, on the basis of information supplied to him or her by the executive authority of the local government or body corporate concerned, as the case may be, shall satisfy himself or herself as to the fact that—
 - (i) the funds which are required cannot be obtained by means other than a guaranteed loan;
 - (ii) no reasonable doubt exists that the local government or body corporate concerned will be able to comply with the conditions and obligations under which the loan will be granted;
 - (iii) the provisions of the loan agreement concerned—
 - (aa) comply with the generally accepted principles of loan agreements;
 - (bb) will be legally and technically correct; and
 - (cc) will fully enunciate the obligations of the Province which will act as guarantor and the manner in which expenditure the Province may have to incur in terms of the guarantee, will be recovered;
 - (iv) taking into account the fact that a guarantee for the loan is required, the cost of the loan is market related;
 - (v) the availability of the loan proceeds will not be prejudicial to financial discipline within the local government or the body corporate concerned.

(4) The payment by the Province which acts as guarantor of legitimate claims arising from a guarantee furnished in terms of the provisions of subsection (1)—

- (a) shall be deemed to have been appropriated for such purposes; and
- (b) shall be reported to the Provincial Legislature by the responsible Member as soon as possible, but not later than six months after such payment was made, and he or she shall simultaneously present to the said Legislature a report containing the circumstances relating to such payment.

(5) The member of the Executive Council responsible for the financial affairs of the Province shall as soon as possible, but in any case not later than six months after the closing of the financial year, cause a statement to be published in the *Provincial Gazette* indicating in respect of each guarantee furnished by the Province in terms of subsection (1), the name of the local government or body corporate in respect of which a guarantee has been furnished, the amount of the commitments which may ensue from each such guarantee, and, if foreign currency is so involved, the relative amount and the financial year in which the relevant guarantee will expire.

(6) Notwithstanding anything to the contrary in this Act or any other law, a guarantee by a Province in respect of the financial obligations arising from a loan shall be furnished only in terms of this section and subject to the provisions of section 157(3) of the Constitution.

(7) A reference to "responsible Member" in this section, shall be deemed to be a reference to the member of the Executive Council who administers a department which is directly or indirectly involved with the matter underlying the expenditure of the proceeds of the loan in respect of which a guarantee was furnished in terms of subsection (1), and if there is doubt as to who the responsible Member is, the member of the Executive Council concerned shall be determined by the member of the Executive Council responsible for financial affairs.

Application of certain provisions concerning powers of responsible Member, and delegation of his powers

24. (1) Whenever a law requires a member of the Executive Council to do anything in or after consultation with or with the concurrence of the responsible Member, such requirement shall, unless one of the Members concerned has otherwise directed, be deemed to have been complied with if consultation has taken place between the heads of the departments concerned or their representatives.

(2) Except in a case to which subsection (1) applies, the responsible Member may delegate to an officer in the department in which the provisions of this Act or any other law are administered by him or her, any power or function conferred on, or assigned to, him or her by this Act or such other law, in relation to the revenue, expenditure or property of the Province or a statutory body, with the exception of a power to make regulations and a power or function contemplated in sections 4(3), 7, 22(6) and 25(3), but shall not thereby be divested of a power or function so delegated, and may amend or withdraw a decision of such an officer by virtue of any such delegation.

Regulations

25. (1) The responsible Member may make regulations—

- (a) prescribing further duties and responsibilities of accounting officers;
- (b) providing for the designation of officers as principal receivers of revenue and prescribing their duties and responsibilities as such;
- (c) providing for the refund from current revenue of moneys collected in error;

- (d) providing for the designation of officers or other persons as financial managers and of officers as departmental accountants and prescribing their duties and responsibilities as such;
- (e) prescribing a system which shall be observed in regard to the collection, receipt, banking, custody, disbursement, control over and accounting for, and disposal of and supervision over, State moneys and the accounts kept in connection therewith;
- (f) prescribing the conditions under which gifts to the Province may be accepted and utilized;
- (g) providing for the control over and stocktaking of securities, stamps and other State property;
- (h) providing for the manner in which and procedures according to which accounting officers and the Treasury shall exercise the powers and perform the duties assigned to them by this Act;
- (i) providing for the financial arrangements regarding a service rendered by one department to another;
- (j) providing in general for the administration of the provisions and the achievement of the objects of this Act.

(2) Different regulations may, under subsection (1), be made in respect of different categories of State moneys or other State property, or different categories of persons entrusted with the collection, receipt, banking, custody, disbursement, disposal and control of, accounting for, and supervision over State moneys and other State property.

(3) The responsible Member may, if in his opinion circumstances warrant it, provide that a regulation made under subsection (1) need not be complied with, or need to be complied with the extent determined by him or her.

(4) The regulations issued in terms of a National Exchequer Act shall *mutatis mutandis* apply to the Province until replaced or amended by regulations issued by the responsible Member.

Instructions

26. (1) The Treasury may from time to time issue Instructions and other directives, which shall not be inconsistent with the Regulations, in regard to—

- (a) any matter mentioned in section 19;
- (b) any matter mentioned in section 25;
- (c) any manner on which accounting officer shall make submissions to the Treasury and the persons by whom such submissions shall be signed;
- (d) the administration, in general, of the provisions of this Act and the regulations and the achievement of the objects thereof.

(2) The Treasury may, if in its opinion circumstances warrant it, approve a departure from an Instruction.

(3) Treasury Instructions issued in terms of a National Exchequer Act shall *mutatis mutandis* apply to the Province, until replaced or amended by Instructions issued by the Treasury.

Revenue Instructions

27. An officer designated as principal receiver of revenue may, from time to time, and shall whenever required by the Treasury to do so, issue to all persons who are responsible for the collection, control and disposal of any revenue in respect of which he or she is the principal receiver, or of such other revenues as the Treasury may determine, such instructions, entitled Revenue Instructions, as the Treasury may approve, or require him or her to issue in regard to such collection, control and disposal.

CHAPTER III**SHORT TITLE****Short title**

28. This Act shall be called the Provincial Exchequer Act, 1994 (Eastern Cape).