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PREMIER'S NOTICE

OFFICE OF THE PREMIER

No. 18

14 October 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: Provincial Exchequer Act
(Pretoria-Witwatersrand-Vereeniging)

ACT

To provide for the regulation of the collection, receipt, control, custody and payment of Provincial moneys and the receipt, custody and control of other Provincial property; the duties and powers of the Provincial Treasury; the furnishing of guarantees; and matters connected therewith.

(English text signed by the Premier)

PREAMBLE

Whereas there is a need to provide for the regulation of the collection, receipt, control, custody and payment of Provincial moneys and the receipt, custody and control of other Provincial property; the duties and powers of the Provincial Treasury; the furnishing of guarantees; and matters connected thereof in an accountable and transparent manner;

And whereas it is necessary that the utilization of moneys in the Provincial Exchequer Account should take into account the existing inequalities between certain regions and localities in the Province and should be based on such objective criteria as may be determined by the Provincial Treasury in the interests of the reconstruction and development of the Province as a whole;

And whereas our commitment to reconstruction and development should guide our actions in banking, investments, other forms of savings, guarantees in respect of loans and the raising of provincial loans;

BE IT ENACTED by the provincial legislature of the Province Pretoria-Witwatersrand-Vereeniging as follows:—

Definitions

1. (1) In this Act and the Regulations and Instructions issued thereunder, unless the context otherwise indicates—

“accounting officer” means an accounting officer mentioned in section 16(3) or a person charged with the responsibility of accounting for Provincial moneys or Provincial property in terms of section 17;

"Act" means an Act of the provincial legislature;

"adjustments estimate" means an estimate of expenditure from the Provincial Revenue Fund on services of the Province submitted to the provincial legislature, and which are confined to—

- (a) the shifting of funds between and within votes;
- (b) reappropriation of moneys which were appropriated in the preceding financial year, but were not spent;
- (c) appropriation of moneys for the services of the Province in respect of which no or insufficient moneys have been appropriated in the financial year concerned and which may only be appropriated—
 - (i) from moneys obtained from the sale of assets of the Province;
 - (ii) as a result of an authorization issued under section 7;
 - (iii) in respect of expenditure already announced by the responsible Member in his or her 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 Provincial Treasury;
- (d) any other change or adjustment to an appropriation Act which is in force in the financial year concerned and which the Provincial Treasury deems necessary; or
- (e) the amount of additional financial allocations received by virtue of sections 155 and 158 of the Constitution.

"appropriation account" means an appropriation account mentioned in section 15;

"appropriation Act" means an Act by which the estimates of expenditure or adjustments estimate as a charge against the Provincial Revenue Account has been 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 as defined in the Banks Act, 1990 (Act No. 94 of 1990);

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

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

"department" means a department established in the administration of the Province;

"estimates of expenditure" means estimates of expected expenditure from the Provincial 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 in respect of which it is deemed necessary to provide for after the firstmentioned estimates have been submitted to the provincial legislature, but before it has been approved;

"Exchequer Act" means the Exchequer Act, 1975 (Act No. 66 of 1975);

"Executive Council" means the Executive Council of the Province;

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

"Instruction" means any Instruction issued by the Provincial Treasury under section 25;

"Province" means the Province of Pretoria-Witwatersrand-Vereeniging;

"Provincial debt" means—

- (a) moneys borrowed by the Province by virtue of section 157 of the Constitution; or
- (b) debts taken over by or allocated to the Province in terms of section 239(3) of the Constitution,

and which are to be repaid from the Provincial Revenue Fund;

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

"provincial legislature" means the provincial legislature of the Province;

"Provincial moneys" means—

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

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

"Provincial revenue" means all moneys received by or accruing to the Province, whether directly or as transfer payments from the State Revenue Fund, and which may be appropriated by the provincial legislature, including—

- (a) financial allocations received by virtue of sections 155 and 158 of the Constitution;
- (b) taxes, levies and fees raised by virtue of section 156 of the Constitution;

(c) loans raised by virtue of section 157 of the Constitution; and

(d) all casual and other receipts, from whatever source,

excluding the amount of a fine not exceeding R50 imposed upon any person by a court of law, in so far as that amount has not been paid;

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

"Provincial Revenue Fund" means the Provincial Revenue Fund for the Province established by section 159(1) of the Constitution;

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

"Provincial Treasury" means the financial authority in the administration of 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;

"Regulation" means a regulation made by the responsible Member under section 24;

"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 the funding thereof may be done from the Provincial Revenue Account, or the accounts of which shall be audited by the Auditor-General;

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

"Treasury" means the National Treasury referred to in the Exchequer Act;

"vote" means a vote shown in a schedule to an appropriation Act.

(2) Any reference to the State Revenue Fund, the Account for Provincial Services: Transvaal or the Treasury in any law, the administration of which has been assigned to the Province in terms of section 235(8) of the Constitution, shall be deemed to be a reference to the Provincial Revenue Fund, the Provincial Revenue Account or the Provincial Treasury as the case may be.

CHAPTER I

PROVINCIAL REVENUE, EXPENDITURE AND ACCOUNTING SYSTEM

Account of Provincial Revenue Fund

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

(2) At the commencement of this Act the Provincial Revenue Account shall be credited by all advances granted to the government of the Province under section 240(4) of the Constitution, and the amount of such an advance shall be deemed to have been appropriated by an Act for the purpose for which the advance was granted.

(3) When the administration of a law is assigned to the government of the Province in terms of section 235(8) of the Constitution, the Provincial Revenue Account shall in accordance with an Act of Parliament be credited with the amount which represents the unexpended portion of the amount—

- (a) appropriated by the National Parliament; or
- (b) authorized by the Minister responsible for National financial matters under section 7 of the Exchequer Act,

for the financial year concerned, for the administration of the law concerned in the Province, and that amount shall be deemed to have been appropriated by an Act in terms of section 4, or authorized by the responsible Member in terms of section 7, as the case may be, for such administration.

(4) The Provincial Treasury shall limit its requisitions on the Treasury in respect of financial allocations contemplated in sections 155 and 158 of the Constitution to amounts necessary to defray its current expenditure.

Provincial Exchequer Account

3. (1) The Provincial Treasury shall maintain at a bank an account for the Province, entitled the Provincial Exchequer Account, into which shall, subject to subsection (2), be deposited all Provincial revenues.

(a) The Provincial Treasury shall in the manner prescribed in the Regulations designate principal receivers of Provincial revenue in respect of all offices where Provincial revenue is received in the Province.

(b) A principal receiver of Provincial revenue contemplated in paragraph (a) shall cause the Provincial revenue received at his or her office from time to time, less the amount of any drawbacks and other refunds, to be deposited in the Provincial Exchequer Account.

(c) Such deposits shall be made on each day on which the Provincial revenue is received, and if such day falls on a public holiday or weekend then such deposit shall be made on the first day on which the bank is open.

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

(4) The Provincial Treasury may utilize any moneys in the Provincial Exchequer Account to defray expenditure chargeable to the Provincial Revenue Account in terms of an Act.

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

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

4. (1) The moneys in the Provincial Revenue Fund shall be appropriated by the provincial legislature as a charge against the Provincial Revenue Account by an appropriation Act or other Act for the requirements of the Province: Provided that until such time as moneys have been so appropriated for such requirements during a financial year, it shall be deemed that moneys have been so appropriated for those requirements to an amount of—

- (i) in respect of the first four months of the financial year concerned, not more than 45 per cent of;
- (ii) in respect of each of the following months, not more than 10 per cent of; and
- (iii) in total, not more than,

the amount appropriated by the provincial legislature by an appropriation Act for the immediately preceding financial year.

(2) Payments by virtue of the proviso to subsection (1) shall be deemed to be payments by virtue of the appropriation Act for the financial year concerned, and as a charge against the Provincial Revenue Account.

(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 authorized by an appropriation Act or other Act during the immediately preceding financial year.

(4) (a) For the purposes of the proviso to subsection (1)—

- (i) in the first financial year of the existence of the Province, the amount utilized during the immediately preceding financial year in the area of the Province for services rendered under laws, the administration of which have been assigned to the Province under section 235(8) of the Constitution, as determined by the Provincial Treasury, shall be deemed to be the amount appropriated by the provincial legislature by an appropriation Act for the immediately preceding financial year; and
- (ii) in any succeeding financial year during which the administration of a law is so assigned, the amount utilized during the immediately preceding financial year in the area of the Province for the service concerned, as determined by the Provincial Treasury, plus the amount appropriated by the appropriation Act for the latter financial year, shall be deemed to be the amount appropriated by the provincial legislature by an appropriation Act for the immediately preceding financial year.

(b) For the purposes of subsection (3) the services referred to in paragraph (a) shall be deemed to be services in respect of which expenditure has been authorized by an appropriation Act or other Act during the immediately preceding financial year.

(5) The responsible Member—

- (a) shall for every financial year, in a form agreed to by the Minister responsible for National financial matters, submit to the provincial legislature estimates of expenditure to be defrayed from the Provincial 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 thereby 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 in respect 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, the Provincial Treasury has approved that a saving under any main division of the vote concerned may be utilized towards that expenditure; or
- (b) the responsible Member has granted a written authority therefore beforehand in terms of section 7.

Column 2 items

5. (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 utilized towards the defrayment of 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 Provincial Conditions of Service, as the designated accounting officer with the concurrence of the Provincial Treasury may determine.

Authority by responsible Member for utilization of moneys in extraordinary circumstances

7. (1) Notwithstanding the provisions of sections 4 and 6, the responsible Member may grant authority for moneys in the Provincial 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 thereof can be made by the provincial legislature; or
- (b) to defray—
- (i) expenditure in connection with an expected excess of a vote which cannot without serious prejudice to the public interest be postponed until appropriation therefore 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 of the amount deemed to have been appropriated in terms of the proviso to section 4(1).

- (2) The responsible Member shall not later than during the next ensuing sitting of the provincial legislature take steps for the appropriation of amounts, the utilization of which had been authorized under subsection (1).

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

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

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

(4) The Provincial Treasury shall keep a record, and without delay notify in writing the Speaker of the provincial legislature and the Auditor-General, of every approval granted under section (3).

Provincial Paymaster-General's Account

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

- (a) appropriated by an Act;
- (b) which may, by virtue of section 7, be utilized for any purpose; or
- (c) deemed to be appropriated by an Act,

as has been requisitioned in terms of subsection (2), to be transferred from the Provincial Exchequer Account to the Provincial Paymaster-General's Account.

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

(b) The Provincial 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 Provincial Treasury shall grant no credit in respect of an amount of which payment was withheld or suspended under section 8(1), unless an approval has been granted under 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 of all payments made therefrom.

(5) An accounting officer shall deposit all Provincial moneys, as well as other moneys for which he or she is accountable, in the Provincial Paymaster-General's Account, and may make payments from that account.

(6) In regard to the Provincial Paymaster-General's Account, the Provincial Treasury shall maintain for each accounting officer an account in respect of all credits, deposits, payments 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 Provincial Treasury for redepositing in the Provincial Exchequer Account, any unexpended moneys in respect of which he or she received credits in terms of subsections (2) and (8), and the Provincial Treasury shall credit therewith the Provincial Revenue Account.

(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 Provincial Treasury in terms of subsection (2), he or she shall as soon as practicable, provided appropriated funds for that financial year are still available under the vote concerned, requisition the Provincial Treasury for a credit to cover that expected excess, and the Provincial Treasury may, in the manner prescribed in subsections (1) and (2), grant the necessary credit and cause the moneys concerned to be transferred in the following financial year.

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

(10) Notwithstanding anything to the contrary contained in this section, the Provincial Treasury may, on a requisition by the Secretary to the provincial legislature, pay to the said Secretary the moneys appropriated for the services of the provincial legislature, or which, by virtue of section 7, may be utilized therefore, or are deemed to be appropriated therefore by an Act, and the Provincial Treasury shall for that purpose grant credits to the said Secretary.

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

- (a) to grant advances to an accounting officer on such conditions as it may determine;
- (b) to make transfers to the Provincial 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 section 157 of the Constitution; and
- (c) for investment on such conditions as it may determine.

Power of Provincial Treasury to utilize moneys in Provincial Exchequer Account for certain purposes

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

- (a) for temporary investment in the Republic on such conditions as it may determine, at a financial institution which in the opinion of the responsible Member, after consultation with the appropriate Standing Committee of the provincial legislature, has the required—
 - (i) financial stability and capital structure;
 - (ii) physical and technological infrastructure; and
 - (iii) commitment to reconstruction and development;
- (b) for the payment of legitimate claims arising from a guarantee furnished in terms of section 22; and
- (c) for the refund of moneys inadvertently or incorrectly paid into the Provincial Exchequer Account.

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

Authority for opening of bank accounts

11. (1) An account in respect of Provincial moneys may be opened only by the Provincial Treasury in terms of sections 3 and 9, or on the written authority of the Provincial Treasury, at a bank to which such an account has been allocated, and which in the opinion of the responsible Member, after consultation with the appropriate Standing Committee of the provincial legislature, has the required—

- (a) financial stability and capital structure;
- (b) physical and technological infrastructure;
- (c) capacity to provide high volume current account commercial banking services;
- (d) branch network that has a sufficient geographic coverage; and
- (e) commitment to reconstruction and development.

(2) A bank at which an account has been opened in terms of subsection (1) shall not allow an overdraft on such an account, subject to section 157(2) of the Constitution.

(3) The Provincial Treasury shall every three years revise the allocation contemplated in subsection (1) of banking accounts to a bank in respect of the Provincial Exchequer Account and the Provincial Paymaster-General's Account, after consultation with the appropriate Standing Committee of the provincial legislature and the South African Reserve Bank.

(4) A contract in respect of the allocation contemplated in subsection (1) of the banking accounts to a bank may be terminated by the Provincial Treasury by giving six month's notice to that effect to the bank concerned.

Establishment of trading and related accounts

12. (1) The Provincial Treasury may authorize an accounting officer to establish trading and related accounts in respect of services and goods supplied by one department to another or to any other institution, including the National Government.

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

- (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 of services and goods referred to in subsection (1);
- (c) which have been obtained from the sale of redundant and unserviceable supplies connected with the supply of the services or goods in question; or
- (d) which have been obtained with the concurrence of the Provincial Treasury from any other source.

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

Systems of bookkeeping and accounting

13. (1) An accounting officer shall follow the systems of bookkeeping and accounting—

- (a) agreed to by the Minister responsible for National financial matters and the Treasury under the Exchequer Act, in so far as they are applicable to an accounting officer;
- (b) agreed to by the responsible Member under section 24(1)(e); and
- (c) determined by the Provincial Treasury under section 25(1)(b).

(2) The Provincial Treasury may, in the manner it deems necessary and after consultation with the Auditor-General, give directives to accounting officers in connection with the systems referred to in subsection (1).

Accounting for Provincial Exchequer Account, and preparation of statements

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

(2) The Provincial 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 Provincial Exchequer Account during the period from the first day of the financial year concerned to the end of that month, as well as the balances in the Provincial Exchequer Account at the beginning and at the end of that period.

(3) As soon as practicable after the accounts in respect of any financial year have been closed, but in any case within 90 days after the close of a financial year, the Provincial Treasury shall prepare statements, as prescribed by the Treasury, of—

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

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

(5) As soon as the statements referred to in subsections (3) and (4) have been prepared, the Provincial Treasury shall submit them to the Auditor-General for examination.

Appropriation Accounts

15. (1) An accounting officer shall as soon as practicable, but not later than 90 days after the close of a financial year, prepare and transmit to the Auditor-General for examination, an 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 Provincial Treasury and the Speaker of the provincial legislature: 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—

- (a) on the receipts side thereof, specify separately the amounts which for the financial year concerned—
 - (i) appear in the estimates of expenditure and an adjustments estimate; and
 - (ii) have been authorized in terms of section 7 but which have not been appropriated in terms of subsection (2) of that section; and

- (b) on the expenditure side thereof, specify 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 vouches, shall not be included on the expenditure side.
- (3) Each appropriation account transmitted 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 a surplus, if any, has been surrendered; and
- (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 17(1) with the responsibility of accounting for Provincial moneys and Provincial 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 concerned.
- (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

16. (1) There shall be an accounting officer for each vote who shall be charged with the responsibility of accounting for all Provincial moneys received by him or her, all payments made by him or her and the acquisition, receipt, custody and disposal of all Provincial property.

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

(b) An accounting officer may with the concurrence of the Provincial Treasury delegate any of his or her powers, and assign any of his or her duties, to any person employed by the Province.

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

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

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

Responsibility of accounting for Provincial moneys and Provincial property by a person who is not an accounting officer

17. (1) The Provincial Treasury may, notwithstanding the provisions of section 16, charge a person who is not an accounting officer with the responsibility of accounting for—

- (a) Provincial moneys received and paid out by that person; and
- (b) Provincial property acquired, received, kept or disposed of by that person.

in connection with a trading and related account, established under section 12(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 accounting for Provincial moneys and Provincial property in respect of a trading and related account or a particular portion of a vote, the Provincial Treasury may assign to such person any or all of the powers and duties referred to in section 16(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 accounting 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 or her powers may be exercised, and his or her duties shall be performed, by the person acting in his or her place.

CHAPTER II

GENERAL FINANCIAL CONTROL

Other powers of Provincial Treasury

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

- (a) give directives in the handling of, and to exercise control over, Provincial moneys and other Provincial property in order 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 Provincial Revenue Account as it may determine shall not be incurred before its approval has 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 Provincial revenue accruing to or expenditure from the Provincial Revenue Fund, and to direct that no such fee or charge or rate, scale or tariff thereof shall be put into operation before the approval of the Provincial 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 Provincial moneys and other Provincial property;
- (f) grant approval for the variation or cancellation of contracts which are 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 analyze them and make recommendations to the responsible Member; and
 - (ii) to make them or processed information thereof available to the 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 Provincial moneys or other Provincial 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) authorize or condone non-compliance by an accounting officer with an instruction or other written request, stipulation or condition of the Provincial Treasury in connection with any matter;
- (k) investigate and inspect systems for the control over, and administration of, Provincial moneys and other Provincial property;
- (l) determine against which vote or sub-division thereof expenditure on a service should be charged;
- (m) determine the terms on which Provincial revenue due may be paid, and determine the conditions on which Provincial moneys may be disbursed;
- (n) approve remissions, as an act of grace, of moneys due to the Province;
- (o) approve refunds of Provincial revenue as an act of grace;
- (p) approve payments, as an act of grace, from Provincial moneys;
- (q) approve that gifts may be made from Provincial moneys and other movable Provincial property or that gifts to the Province may be accepted;
- (r) grant approval for the alienation, letting or other disposal of movable Provincial property;
- (s) give directives in the handling of, and exercise control over, all trust money and trust property (which are not Provincial moneys or Provincial property) temporarily held by an accounting officer or person in the service of the Province on behalf of any other person or body;
- (t) give directives in the application of norms and standards prescribed by the Treasury in respect of improvements to immovable property financed in full or in part from the Provincial Revenue Fund; and;
- (u) approve that sponsorships to the Province may be accepted;

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 Provincial property, exceeds R20 000 or relates to a tax, duty or impost levied 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, duty or impost justify a refund as an act of grace of the whole or a portion of the amount concerned, the Provincial Treasury may approve such refund to an amount, not exceeding R20 000, as a charge against the vote concerned.

(2) The Provincial 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 the Provincial Treasury 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 or her 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 or her dependants or are of relatively little value, and the debtor or his or her 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 Provincial revenue accruing to, or expenditure from, the Provincial Revenue Fund, such a determination shall, notwithstanding the provisions of such a law, not be made before the approval of the Provincial Treasury therefore has been obtained.

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

is satisfied with the explanation of the responsible person, the Provincial 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 be just in the circumstances.

Delegation of powers of Provincial Treasury

19. (1) The Provincial Treasury may on such conditions as it may determine, delegate to an accounting officer any power conferred upon it by section 18(1) [excluding paragraphs (g), (h) and (j)] or (2) or 21(5).

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

(3) An accounting officer shall not be divested of any power delegated by him or her by virtue of subsection (2), and may amend or withdraw any decision made in the exercise of that power.

(4) The Provincial Treasury shall not be divested of any power delegated by it under subsection (1) or under its authority contemplated in subsection (2), 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 by virtue of subsection (2) been delegated to the holder of a post, that power may be exercised by the person who at any time performs the functions attached to that post.

Unauthorized expenditure

20. (1) Subject to subsections (2) and (4), an expenditure concerned shall be unauthorized if—

- (a) a payment is made by an accounting officer without provision having been made therefore by or by virtue of the provisions of any Act;
- (b) a payment or part of a payment on a service authorized 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) expenditure being brought to account as a final debit contrary to the provisions of section 5(3); 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 granted therefor, or an increase referred to in section 6(2) has not been determined therefor;
- (c) an accounting officer is unable to produce to the Auditor-General in respect of a payment an appropriate Provincial Treasury authority required in terms of the provisions of this Act or any other Act; or
- (d) an accounting officer makes a payment inconsistent with a provision of any Act.

(2) An unauthorised expenditure contemplated in subsection (1) shall not form a debit against the Provincial Revenue Fund until—

- (a) in the case of paragraph (a), (b) or (c) of that subsection, the expenditure concerned has been authorised by an Act; or
- (b) in the case of paragraph (d) of that subsection, the expenditure concerned has been validated by an Act.

(3) Unauthorised expenditure or any part thereof determined by the provincial legislature which has not been authorized or validated as contemplated in subsection (2), shall subject to sections 22 and 24 of the Constitution be recovered by the Provincial Treasury from the accounting officer referred to in section 16(3)(a), if the accounting officer cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorized expenditure.

(4) (a) 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 the said paragraph (c) a reference to Provincial Treasury authority shall be construed as a reference also to an authority of a member of the Executive Council, or an executive authority or any other applicable authority, as the case may be.

(b) Unauthorized expenditure referred to in paragraph (a) or any part thereof determined by the provincial legislature shall not form a debit against a fund or account concerned until it has been authorized, validated or made available in accordance with the normal budgetary procedure applicable to the fund or account concerned.

(c) Any unauthorized expenditure referred to in paragraph (a) which has not been authorized or validated shall subject to sections 22 and 24 of the Constitution be recovered by the Provincial Treasury from the accounting officer referred to in section 16(3)(b), if the accounting officer 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

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

- (a) failed to collect Provincial moneys for the collection of which he or she is or was responsible;
- (b) is or was responsible for an irregular payment of Provincial moneys or for a payment of such moneys not supported by a proper voucher;
- (c) is or was responsible for a fruitless expenditure of Provincial 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, Provincial moneys, stamps, face-value documents and forms having a potential value, securities, equipment, stores or any other Provincial property; or
- (e) due to an omission to carry out his or her 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 Provincial Treasury shall, subject to the provisions of any other law, determine the amount of such loss or damage or the amount necessary to replace Provincial property in which there is a deficiency or which was destroyed, as prescribed by the Instructions and, subject to the provisions of subsection (5) and sections 22 and 24 of the Constitution, direct, by notice in writing, the said person to pay to the said accounting officer or holder of a post, within 30 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 directed to pay an amount, fails to pay such amount within the said 30 days, 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-fourth 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 directed to pay an amount, fails to pay such amount within the said 30 days, 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 directed to pay an amount in terms of subsection (1) makes, within the said 30 days, an offer to pay the amount in instalments, the accounting officer, or the holder of a post designated by the Provincial 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 Provincial Treasury shall be obtained to pay the amount over a period in excess of the period mentioned, and the Provincial 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 Provincial 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 therefore, he or she may request the Provincial Treasury to exempt that person from payment of the whole or a portion of such amount, and the Provincial 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 directed to pay an amount may, within a period of 30 days from the date of such direction, 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 Provincial Treasury, and if the accounting officer concerned refuses to address such a request to the Provincial Treasury or if the Provincial 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 30 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, after such further investigation as he or she may deem necessary, dismiss the appeal or direct that the appellant be exempted either wholly or partly, according to what he or she may consider fair and reasonable, from the payment of such amount.

(7) A person who has in terms of subsection (1) been directed to pay an amount may, instead of appealing to the responsible Member under subsection (6), apply within a period of 30 days from the date of such direction, or within such further period as the court may allow to competent court for an order setting aside such direction 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 direction was rightly made or that that amount is correct, make an order setting aside such direction 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).

(9) If a person, who has in terms of subsection (1) been directed to pay an amount, fails to pay the amount within the said 30 days, it shall be deemed to be a debt owing to the Province on which interest shall be payable at the rate contemplated in section 26(6) of the Exchequer Act.

(10) Any loss or damage to the value of R50 000 or more shall be immediately reported by the accounting officer concerned to the Auditor-General and the Speaker of the provincial legislature.

Guarantees in respect of loans

22. (1) The responsible Member, or any other Member of the Executive Council with the concurrence of the responsible Member, may, subject to section 157(3) of the Constitution and this section, on application furnish a guarantee for the financial obligations arising from a loan raised by a local government, board or body established by or under an Act.

(2) An application contemplated in subsection (1) shall be accompanied by a written recommendation by the executive authority of the local government, board or body concerned that the required guarantee may be furnished under this section.

(3) A guarantee contemplated in subsection (1) shall not be furnished unless the responsible Member or other Member of the Executive Council with the concurrence of the responsible Member, on the ground of information furnished by the local authority, board or body concerned, are satisfied that—

(a) the proceeds of the contemplated loan—

- (i) will be utilized in the public interest within the area of jurisdiction by the local government concerned or within the area of the Province by the board or body concerned;
- (ii) will not be utilized for the financing of current expenditure;
- (iii) will be utilized by the local government concerned in accordance with any Act on the borrowing of moneys applicable to it;
- (iv) will be accounted for separately from other amounts by the local government, board or body concerned; and
- (v) will not be spent on imported capital goods, if the loan is payable in rand,

- (b) the funds which are required cannot be obtained by means other than a guaranteed loan;
- (c) no reasonable doubt exists that the local government, board or body concerned will be able to comply with the conditions and obligations in terms of the loan agreement;
- (d) the provisions of the loan agreement concerned—
 - (i) comply with the generally accepted principles of loan agreements;
 - (ii) are legally and technically correct; and
 - (iii) fully enunciate the obligations of the Province as guarantor, and the manner in which expenditure which the Province may incur in terms of the guarantee will be recovered;
- (e) the cost of the loan is market related taking into account the fact that a guarantee is required for the loan; and
- (f) the availability of the loan proceeds will not be prejudicial to financial discipline within the local government, board or body concerned.

(4) The responsible Member shall as soon as possible, but in any case not later than six months after the end of the financial year, cause a statement to be published in the *Provincial Gazette* indicating in respect of each guarantee furnished by the Province under subsection (1), the name of the local government, board or body to which a guarantee has been furnished, the amount of the commitments which may ensue from each guarantee and, if foreign currency is involved, the amount concerned and the financial year in which the guarantee concerned will expire.

(5) The payment by the Province of legitimate claims arising from a guarantee furnished under the provisions of subsection (1)—

- (a) shall be deemed to have been appropriated by an Act for such purposes; and
- (b) shall be reported to the provincial legislature as soon as practicable, but not later than six months after the payment has been made, by the responsible Member who shall simultaneously report to the said legislature the circumstances relating to such payment.

(6) For the purposes of this section "other Member" means the member of the Executive Council who administers a department which is directly or indirectly involved with the matter underlying the utilization of the proceeds of the contemplated loan for which a guarantee is required, and if there is doubt as to who the other Member is, the member of the Executive Council concerned shall be determined by the responsible Member.

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

23. (1) Whenever this Act or any other 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 be deemed to have been complied with it, on the instruction of the responsible Member, 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 or assign 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 receipts, 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(5), 7, 21(6) and 24(3), but he or she shall not thereby be divested of a power or function so delegated or assigned, and may amend or withdraw a decision of such an officer taken in terms of any such delegation.

Regulations

24. (1) The responsible Member may make Regulations, which shall not be inconsistent with the Exchequer Act or the Financial Regulations made thereunder, in so far as they apply in respect of the Province, or this Act, for—

- (a) prescribing further duties and responsibilities for accounting officers;
- (b) providing for the manner of designating officers as principal receivers of Provincial revenue and prescribing their duties and responsibilities as such;
- (c) providing for the refund from current Provincial 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, payment, disposal and control of accounting for, and supervision over, Provincial moneys, and the accounts which shall be 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 Provincial property;
- (h) providing for the manner in which and procedures according to how accounting officers and the Provincial Treasury shall exercise the powers and perform the duties granted or assigned to them by this Act;
- (i) providing for the financial arrangements regarding a service rendered by one department to another; and
- (j) providing in general for the administration of the provisions of this Act and for the achievement of the objects thereof.

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

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

(4) Until such time as Regulations have been made under this section, the Financial Regulations made under the Exchequer Act, in so far as they could have been made under this section, shall *mutatis mutandis* apply in respect of the Province as if they have been made under this section.

Instructions

25. (1) The Provincial Treasury may issue Instructions, which shall not be inconsistent with the Exchequer Act or the Financial Regulations or Treasury Instructions made thereunder (in so far as they apply in respect of the Province), this Act or the Regulations, in regard to—

- (a) any power mentioned in section 18;
- (b) any matter mentioned in section 24(1);
- (c) the manner in which submissions to the Provincial Treasury shall be made by accounting officers, and the persons by whom such submissions shall be signed; and
- (d) the administration in general of the provisions of this Act and the Regulations, and the achievement of the objects thereof.

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

(3) Until such time as Instructions have been issued under this section, the Treasury-Instructions made under the Exchequer Act, in so far as they could have been made under this section, shall *mutatis mutandis* apply in respect of the Province as if they have been issued under this section.

Revenue Instructions

26. A principal receiver of Provincial revenue designated in terms of section 3(2)(a) may, and shall whenever required by the Provincial Treasury to do so, issue to all persons who are responsible for the collection, control or disposal of any Provincial revenue in respect of which he or she is the principal receiver, or such other Provincial revenue as the Provincial Treasury may determine, such instructions (entitled Revenue Instructions) as the Provincial Treasury may approve, or require him or her to issue, in regard to such collection, control and disposal.

Raising of loans by Province

27. (1) Without derogating from the provisions of section 157 (1) and (2) of the Constitution, the Province shall be competent to raise loans for capital expenditure and bridging finance subject to the norms and standards prescribed by an Act of Parliament contemplated in that section.

(2) Without derogating from the provisions of section 239(3) of the Constitution, the Province shall be liable for all debts referred to in paragraph (b) of the definition of Provincial debts.

Gifts to Province

28. (1) All gifts received on behalf of the Province shall be reported by the recipient to the Auditor-General and the Speaker of the provincial legislature.

(2) Whenever a gift is made to the Province and it is not apparent to what purpose it should be applied, the responsible Member may decide the manner in which such gift shall be utilized.

(3) When a gift is in the form of cash the responsible Member may, notwithstanding any provision to the contrary in any law contained, direct that for the purposes of this Act, it shall be deemed not to be Provincial revenue but shall be accounted for in the appropriate suspense account.

***Bona vacantia* accruing to Province**

29. Where any moneys, property or right accrues to the Province as *bona vacantia*, the responsible Member shall exercise all powers, authority and prerogatives on behalf of the Province, including the right of disposal and cession of such moneys, property or right, and shall also fulfil any obligation in respect of or in connection with such moneys, property or right, as soon as practicable.

Short title

30. This Act shall be called the Provincial Exchequer Act, 1994.

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