

PUBLIC ENTITIES

Part Z: Application of this Chapter

Application

46. The provisions of this Chapter apply, to the extent indicated, to all public entities listed in Schedule 2 or 3. 20

Unlisted public entities

47. (1) The Minister, by notice in the national *Government Gazette*—
- (a) must amend Schedule 3 to include in the list all public entities that are not listed; and
 - (b) may make technical changes to the list. 25
- (2) The accounting authority for a public entity that is not listed in either Schedule 2 or 3 must, without delay, notify the National Treasury, in writing, that the public entity is not listed.
- (3) Subsection (2) does not apply to an unlisted public entity that is a subsidiary of a public entity, whether the latter entity is listed or not. 30
- (4) The Minister may not list the following institutions in Schedule 3:
- (a) A constitutional institution, the South African Reserve Bank and the Auditor-General;
 - (b) any public institution which functions outside the sphere of national government; and
 - (c) any institution of higher education. 35

Classification of public entities

48. (1) The Minister may by notice in the national *Government Gazette* classify public entities listed in Schedule 3 in accordance with the relevant definitions set out in section 1, as— 40
- (a) national government business enterprises; and
 - (b) national public entities.
- (2) A public entity is for the purposes of this Act regarded as belonging to the class in which it is classified in terms of subsection (1).

*Part 2: Accounting authorities for public entities***Accounting authorities**

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

(2) If the public entity—

(a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or

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

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

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

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

Fiduciary duties of accounting authorities

50. (1) The accounting authority for a public entity must—

(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;

(b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;

(c) on request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and

(d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

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

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

(b) use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.

(3) A member of an accounting authority must—

(a) disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and

(b) withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

General responsibilities of accounting authorities

51. (1) An accounting authority for a public entity—

(a) must ensure that that public entity has and maintains—

(i) effective, efficient and transparent systems of financial and risk management and internal control;

(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and

- (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
 - (b) must take effective and appropriate steps to— 5
 - (i) collect all revenue due to the public entity concerned; and
 - (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
 - (iii) manage available working capital efficiently and economically; 10
 - (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
 - (d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation; 15
 - (e) must take effective and appropriate disciplinary steps against any employee of the public entity who—
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) commits an act which undermines the financial management and internal control system of the public entity; or 20
 - (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
 - (f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament, and to the relevant executive authority or treasury, as may be required by this Act; 25
 - (g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and
 - (h) must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity. 30
- (2) If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury. 35

Annual budget and corporate plan by Schedule 2 public entities and government business enterprises

52. The accounting authority for a public entity listed in Schedule 2 or a government business enterprise listed in Schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that public entity or government business enterprise, and to the treasury, at least one month, or another period agreed with the National Treasury, before the start of its financial year— 40
- (a) a projection of revenue, expenditure and borrowings for that financial year in the prescribed format; and
 - (b) a corporate plan in the prescribed format covering the affairs of that public entity or business enterprise for the following three financial years, and, if it has subsidiaries, also the affairs of the subsidiaries. 45

Annual budgets by non-business Schedule 3 public entities

53. (1) The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority. 50
- (2) The budget must be submitted to the executive authority through the accounting 55

officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.

(3) A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained. 5

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

(5) The National Treasury may regulate the application of this section by regulation or instruction in terms of section 76. 10

Information to be submitted by accounting authorities

54. (1) The accounting authority for a public entity must submit to the treasury or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as the treasury or the Auditor-General may require. 15

(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction: 15

(a) establishment or participation in the establishment of a company;

(b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement; 20

(c) acquisition or disposal of a significant shareholding in a company;

(d) acquisition or disposal of a significant asset;

(e) commencement or cessation of a significant business activity; and

(f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement. 25

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

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

Annual report and financial statements

55. (1) The accounting authority for a public entity—

(a) must keep full and proper records of the financial affairs of the public entity; 35

(b) prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for that public entity;

(c) must submit those financial statements within two months after the end of the financial year— 40

(i) to the auditors of the public entity for auditing; and

(ii) if it is a business enterprise or other public entity under the ownership control of the national government, to the treasury; and

(d) must submit within five months of the end of a financial year to the treasury, to the executive authority responsible for that public entity and, if the Auditor-General did not perform the audit of the financial statements, to the Auditor-General— 45

(i) an annual report on the activities of that public entity during that financial year; 50

(ii) the financial statements for that financial year after the statements have been audited; and

(iii) the report of the auditors on those statements.

(2) The annual report and financial statements referred to in subsection (1) (d) must— 55

(a) fairly present the state of affairs of the public entity, its business, its financial

results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned;

(b) include particulars of—

- (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the 5 financial year;
- (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
- (iii) any losses recovered or written off,
- (iv) any financial assistance received from the state and commitments made 10 by the state on its behalf; and
- (v) any other matters that may be prescribed; and

(c) include the financial statements of any subsidiaries.

(3) An accounting authority must submit the report and statements referred to in subsection (1) (d), for tabling in Parliament, to the relevant executive authority through 15 the accounting officer of a department designated by the executive authority.

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

Part 3: Other officials of public entities

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Assignment of powers and duties by accounting authorities

56. (1) The accounting authority for a public entity may—

- (a) in writing delegate any of the powers entrusted or delegated to the accounting authority in terms of this Act, to an official in that public entity; or
- (b) instruct an official in that public entity to perform any of the duties assigned to 25 the accounting authority in terms of this Act.

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

- (a) is subject to any limitations and conditions the accounting authority may impose;
- (b) may either be to a specific individual or to the holder of a specific post in the 30 relevant public entity; and
- (c) does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(3) The accounting authority may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any 35 rights that may have become vested as a consequence of the decision.

Responsibilities of other officials

57. An official in a public entity—

- (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility 40 of that official;
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful 45 expenditure and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsi- 50 bility.

Part 4: External auditors**Appointment of auditors**

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

(a) the Auditor-General; or

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

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

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

Discharge of auditors

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

(a) after consultation with the accounting authority for that public entity; and

(b) with the concurrence of the Auditor-General.

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

(a) in writing give notice of the proposed discharge to the auditor, with reasons; and

(b) give the auditor an opportunity to make written representations to the executive authority and the Auditor-General within 20 days of receipt of the notice.

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

Duties and powers of auditors

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

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

(a) has access at all reasonable times to the accounting records, including all books, vouchers, documents and other property of the public entity;

(b) may require from the accounting authority for that public entity such information and explanations as are necessary for the purpose of the audit; and

(c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management.

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

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

(a) must receive notice of every meeting of the public entity's audit committee; and

(b) may attend, and participate in, any meeting of the audit committee at the expense of the public entity.

Reports of auditor

61. (1) The report of an auditor appointed in terms of section 58(1)(b) must be addressed to the executive authority responsible for the public entity concerned and

must state separately in respect of each of the following matters whether in the auditor's opinion—

- (a) the annual financial statements of the public entity fairly present the financial position and the results obtained by the entity in accordance with subsection 55(1)(b) applied on a basis consistent with that of the preceding year; 5
 - (b) if required by the Auditor-General, the performance information furnished in terms of subsection 55(2)(a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year; and
 - (c) the transactions that had come to the auditor's attention during auditing were in all material respects in accordance with the mandatory functions of the public entity determined by law or otherwise. 10
- (2) The auditor—
- (a) must report to the executive authority responsible for the public entity the results of any investigation carried out under subsection 60(2)(c); and
 - (b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should in the public interest be brought to the notice of Parliament. 15

Duties and powers of Auditor-General

62. (1) The Auditor-General may—

- (a) investigate any public entity or audit the financial statements of any public entity if the Auditor-General is not appointed, as auditor and the Auditor-General considers it to be in the public interest' or upon the receipt of a complaint; and 20
 - (b) recover the cost of the investigation or audit from the public entity.
- (2) An investigation or audit in terms of section (1) may be carried out either by the Auditor-General or a person appointed by the Auditor-General. 25
- (3) The executive authority responsible for a public entity in respect of which the Auditor-General has issued a special report in terms of subsection (1) or (2), must promptly table the report in the National Assembly.
- (4) The Auditor-General may— 30
- (a) claim the reasonable cost of performing the duties and exercising the powers in terms of this section from the public entity concerned; and
 - (b) annually report to Parliament on specific and general findings regarding the accountability of public entities.

CHAPTER 7

35

EXECUTIVE AUTHORITIES

Financial responsibilities of executive authorities

63. (1)(a) Executive authorities of departments must perform their statutory functions within the limits of the funds authorised for the relevant vote.
- (b) In performing their statutory functions executive authorities must consider the monthly reports submitted to them in terms of section 39(2)(b) and 40(4)(c). 40
- (2) The executive authority responsible for a public entity under the ownership control of the national executive must exercise that executive's ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive. 45

Executive directives having financial implications

64. (1) Any directive by an executive authority of a department to the accounting officer of the department having financial implications for the department must be in Writing.
- (2) If implementation of the directive is likely to result in unauthorised expenditure, the accounting officer will be responsible for any resulting unauthorised expenditure 50

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

(3) Any decision of the executive authority to proceed with the implementation of the directive, and the reasons for the decision, must be in writing, and the accounting officer must promptly file a copy of this document with the National Treasury and the Auditor-General. 5

Tabling in legislatures

65. (1) The executive authority responsible for a department or public entity must table in the National Assembly.—

(a) the annual report and financial statements referred to in section 40(1)(d) or 55(1)(d) and the audit report on those statements, within one month after the accounting officer for the department or the accounting authority for the public entity received the audit report; and 10

(b) the findings of a disciplinary board, and any sanctions imposed by such a board, which heard a case of financial misconduct against an accounting officer or accounting authority in terms of section 81 or 83. 15

(2) If an executive authority fails to table, in accordance with subsection(1) (a), the annual report and financial statements of the department or the public entity, and the audit report on those statements, in the relevant legislature within six months after the end of the financial year to which those statements relate— 20

(a) the executive authority must table a written explanation in the legislature setting out the reasons why they were not tabled; and

(b) the Auditor-General may issue a special report on the delay.