GENERAL NOTICE

NOTICE 1261 OF 2004

NATIONAL TREASURY

PUBLIC FINANCE MANAGEMENT ACT, 1999: DRAFT TREASURY REGULATIONS

The draft Treasury Regulations are set out in the Schedule and are hereby published for public comment in terms of section 78 of the Public Finance Management Act, 1999.

Interested persons who wish to comment on the draft Treasury Regulations may submit their representations in writing before 19 July 2004 to:

The Director-General
National Treasury
Private Bag X115
PRETORIA
0001

All representations must be marked for the attention of **Mr Jayce Nair** and may either be posted to the above address, transmitted by fax to **012 – 326 5445** or by e-mail to **Jayce.Nair@treasury.gov.za**

SCHEDULE

Draft Treasury Regulations

for departments, trading entities, constitutional institutions and public entities

Issued in terms of the

Public Finance Management Act, 1999

National Treasury

Republic of South Africa

[May 2002] June 2004

Contents

03-148875—B

PART 1

Definitions, application and date of commencement

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General definitions, application and date of commencement

1.1 General definitions

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

"Act" means the Public Finance Management Act (Act 1 of 1999), as amended;

"debt" means an amount owing to the state;

"division of revenue grants" mean allocations from the national government to provinces and local government as listed in the schedules to the annual Division of Revenue Act, including transfers in terms of that Act;

"executive authority" in relation to a constitutional institution consisting of a body of persons, means the chairperson of the constitutional institution, and in relation to a constitutional institution with a single office bearer, means the incumbent of that office;

"finance lease" refers to a contract that transfers the risks, rewards, rights and obligations incident to ownership to the lessee and is recorded as a purchase of equipment by means of long-term borrowing;

"head official of the treasury" means the administrative head of the department responsible for financial and fiscal matters, which forms part of the relevant treasury;

"institution" means a department or a constitutional institution;

"official" means a person in the employ of a department or constitutional institution;

"operating lease" refers to a contract where the lessor retains the risks and obligations incident to ownership and payments by the lessee are recorded as rental expenses.

1.2 Application

1.2.1 These *Treasury Regulations* apply –

(a) to all departments, but only to the extent as indicated in regulations 1 to 24 and 26;

(b) to all constitutional institutions, but only to the extent as indicated in regulations 1 to 22;

(c) to all public entities listed in Schedule 2, but only to the extent as indicated in paragraph 6.1.2 and regulations 24, 25, 27 to 29 and 31 to 33;

(d) to all public entities listed in Schedules 3A and 3C, but only to the extent as indicated in paragraph 6.1.2, and regulations 16, 16A, 24 to 28 and 30 to 33;

(e) to all public entities listed in Schedules 3B and 3D, but only to the extent as indicated in paragraph 6.1.2 and regulations 16, 24, 25, 27 to 29 and 31 to 33; and

(f) to the South African Revenue Service as a Schedule 3A public entity but only to the extent as indicated in paragraphs 6.1.2, regulations 24 to 28 and 30 to 33.

1.2.2 These *Treasury regulations*, read in context, also apply to the South African Revenue Service as a department, but only to the extent that it collects and administers state revenue and as indicated in regulations 6.1.2, 7.1, 7.2, 11.1, 11.2.1(a), 11.3,11.4, 12.1.1, 12.2.1(a) to (d), 12.5.1, 12.6, 12.7.1 to 12.7.3, 15.4, 15.7, 15.10.2, 15.11, 17.2, and 22.1.

1.2.3 For purposes of regulation 1.2.2, the *Treasury Regulations* that do apply to the South African Revenue Service, apply as though it were a department with its Commissioner as its accounting officer.

1.3 Date of commencement

1.3.1 These *Treasury Regulations* take effect from **[27 May 2002]** 1 August 2004, unless otherwise indicated in the text.

PART 2

Management arrangements

2

Corporate management

2.1 Chief financial officer

2.1.1 Unless directed otherwise by the relevant treasury, each institution must have a chief financial officer serving on the senior management team.

2.1.2 The chief financial officer is directly accountable to the accounting officer.

2.1.3 Without limiting the right of the accounting officer to assign specific financial management responsibilities, the general responsibility of the chief financial officer is to assist the accounting officer in discharging the duties prescribed in Part 2 of Chapter 5 of the Act and the annual Division of Revenue Act. These duties relate to the effective financial management of the institution including the exercise of sound budgeting and budgetary control practices; the operation of internal controls and the timely production of financial reports.

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Internal control

3.1 Audit committees [Sections 76(4)(d) and 77 of the PFMA]

3.1.1 If considered feasible, the relevant treasury may direct that institutions share audit committees. If such a determination is made, the Auditor-General must be informed within 30 days of the determination.

3.1.2 In the case of a non-shared audit committee, the accounting officer of an institution must appoint audit committee members in consultation with the relevant executive authority.

3.1.3 In the case of a shared audit committee, the head of the relevant treasury must appoint audit committee members after consultation with the relevant executive authorities.

3.1.4 The chairperson of an audit committee must be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be a political office bearer.

3.1.5 Audit committees must be constituted so as to ensure their independence and their membership must be disclosed in the annual report of the institution.

3.1.6 Members of an audit committee who have been appointed from outside the public service pursuant to section 77(a)(i) of the Act must have appropriate experience, be appointed on contract and be remunerated in accordance with paragraph 20.2.2 <u>and 20.2.3</u> of these regulations. **[Should it be deemed necessary, such members may be remunerated taking into account tariffs determined by the South African Institute of Chartered Accountants in consultation with the Auditor-General as provided for in paragraph 20.2.3.]**

3.1.7 The relevant executive authority must concur with any premature termination of the services of a person serving on an audit committee.

3.1.8 An audit committee must operate in terms of a written terms of reference, which must deal adequately with its membership, authority and responsibilities. The terms of reference must be reviewed at least annually to ensure its relevance.

3.1.9 It must be disclosed in the institution's annual report whether or not the audit committee has adopted a formal terms of reference and if so, whether the committee satisfied its responsibilities for the year, in compliance with its terms of reference.

3.1.10 The audit committee must, amongst others review the following:

(a) the effectiveness of the internal control systems;

(b) the effectiveness of the internal audit function;

(c) the risk areas of the institution's operations to be covered in the scope of internal and external audits;

(d) the adequacy, reliability and accuracy of the financial information provided to management and other users of such information;

(e) any accounting and auditing concerns identified as a result of internal and external audits;

(f) the institution's compliance with legal and regulatory provisions; and

(g) the activities of the internal audit function, including its annual work programme, co-ordination with the external auditors, the reports of significant investigations and the responses of management to specific recommendations.

3.1.11 The audit committee must have explicit authority to investigate matters within its powers, as identified in the written terms of reference. The audit committee must be provided with the resources it needs to investigate such matters and shall have full access to information. The audit committee must safeguard all the information supplied to it within the ambit of the law.

3.1.12 An audit committee must report and make recommendations to the accounting officer, but the accounting officer retains responsibility for implementing such recommendations.

3.1.13 In addition to the above, an audit committee must, in the annual report of the institution, comment on –

(a) the effectiveness of internal control;

(b) the quality of in year management and monthly/quarterly reports submitted in terms of the Act and the Division of Revenue Act; and

(c) its evaluation of the annual financial statements.

3.1.14 Should a report to an audit committee, whether from the internal audit function or any other source, implicate the accounting officer in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority.

3.1.15 An audit committee may communicate any concerns it deems necessary to the executive authority, the relevant treasury and the Auditor-General.

3.1.16 The audit committee must meet at least annually with the Auditor-General to ensure that there are no unresolved issues of concern.

3.2 Internal controls and internal audit [Sections 38(1)(a)(i) and 76(4)(e) of the PFMA]

3.2.1 The accounting officer must ensure that a risk assessment is conducted regularly to identify emerging risks of the institution. A risk management strategy, which must include a fraud prevention plan, must be used to direct internal audit effort and priority, and to determine the skills required of managers and staff to improve controls and to manage these risks. The strategy must be clearly communicated to all officials to ensure that the risk management strategy is incorporated into the language and culture of the institution.

3.2.2 Each institution to which these *Regulations* apply must have an internal audit function.

3.2.3 If considered feasible, the relevant treasury may direct that institutions share internal audit functions. If such a determination is made, the Auditor-General must be informed within 30 days of the determination.

3.2.4 An internal audit function may be partly or wholly contracted to an external organisation with specialist audit expertise, provided that its selection is in accordance with the relevant government's competitive tendering procedures.

3.2.5 The purpose, authority and responsibility of the internal audit function must, in consultation with the audit committee, be formally defined in an audit charter and be consistent with the Institute of Internal Auditors ("IIA") definition of internal auditing.

3.2.6 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.

3.2.7 An internal audit function must prepare, in consultation with and for approval by the audit committee –

(a) a rolling three-year strategic internal audit plan based on its assessment of key areas of risk for the institution, having regard to its current operations, those proposed in its strategic plan and its risk management strategy;

(b) an annual internal audit plan for the first year of the rolling three-year strategic internal audit plan;

(c) plans indicating the proposed scope of each audit in the annual internal audit plan; and

(d) a quarterly report to the audit committee detailing its performance against the annual internal audit plan, to allow effective monitoring and possible intervention.

3.2.8 An internal audit function must assess the operational procedure and monitoring mechanisms over all transfers made and received, including transfers in terms of the annual Division of Revenue Act.

3.2.9 An internal audit function must report directly to the accounting officer and shall report at all audit committee meetings. The function must be independent of activities that are audited, with no limitation on its access to information.

3.2.10 The internal audit function must co-ordinate with other internal and external providers of assurance to ensure proper coverage and to minimise duplication of effort.

3.2.11 The internal audit function must assist the accounting officer in maintaining efficient and effective controls by evaluating those controls to determine their effectiveness and efficiency, and by developing recommendations for enhancement or improvement. The controls subject to evaluation should encompass the following-

(a) the information systems environment;

(b) the reliability and integrity of financial and operational information;

(c) the effectiveness of operations;

(d) safeguarding of assets; and

(e) compliance with laws, regulations and controls.

3.2.12 The internal audit function must assist the accounting officer in achieving the objectives of the institution by evaluating and developing recommendations for the enhancement or improvement of the processes through which -

(a) objectives and values are established and communicated;

(b) the accomplishment of objectives is monitored;

(c) accountability is ensured; and

(d) corporate values are preserved.

4

Financial misconduct

4.1 **Investigation of alleged financial misconduct** [Sections 85(1)(b), (c) and (d) of the PFMA]

4.1.1 If an official is alleged to have committed financial misconduct, the accounting officer of the institution must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts and agreements applicable in the public service.

4.1.2 The accounting officer must ensure that such an investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

4.1.3 If an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts **[applicable]** and agreements applicable in the public service.

4.1.4 A relevant treasury may –

(a) direct that an official other than an employee of the institution conducts the investigation; or

(b) issue any reasonable requirement regarding the way in which the investigation should be performed.

4.2 **Criminal proceedings** [Section 86 of the PFMA]

4.2.1 The accounting officer must advise the executive authority, relevant treasury and the Auditor-General of any criminal charges it has laid against any person in terms of section 86 of the Act.

4.2.2 The relevant treasury may direct an institution to lay criminal charges against any person should an accounting officer fail to take appropriate action.

4.3 **Reporting** [Section 85(1)(a) and (e) of the PFMA]

4.3.1 The accounting officer of a department must, as soon as the disciplinary proceedings are completed, report to the executive authority, the Department of Public Service and Administration and the Public Service Commission on the outcome, including –

(a) the name and rank of the official against whom the proceedings were instituted;

(b) the charges, indicating the financial misconduct the official is alleged to have committed;

(c) the findings;

(d) any sanction imposed on the official; and

(e) any further action to be taken against the official, including criminal charges or civil proceedings.

4.3.2 The accounting officer of a constitutional institution must report the information required in terms of paragraph 4.3.1 (a) to (e) of these regulations to Parliament.

4.3.[2]3 The **[institution]** accounting officer of a department must inform the executive authority, the relevant treasury, the Department of Public Service and Administration and the Public Service Commission of the outcome of any criminal proceedings instituted against any person for financial misconduct in terms of section 86 of the Act, whilst the accounting officer of a constitutional institution must inform Parliament of such outcomes.

4.3.[3]4 The accounting officer of an institution must, on an annual basis, submit to the provincial treasury (if applicable), National Treasury and Auditor-General a schedule of –

(a) the outcome of any disciplinary proceedings and/or criminal charges;

(b) the names and ranks of officials involved; and

(c) the sanctions and any further actions taken against these officials.

4.3.[4]5 The schedule mentioned in paragraph 4.3.3 must be accompanied by a report which refers to any changes made to the institution's systems of financial and risk management as a result of any investigation.

PART 3

Planning and budgeting

5

Strategic Planning

5.1 Annual preparation of strategic plans

5.1.1 Each year, the accounting officer of an institution must prepare a strategic plan for the forthcoming MTEF period for approval by the relevant executive authority.

5.2 Submission and contents of strategic plans

5.2.1 In order to facilitate the discussion of individual votes, the approved strategic plan must be tabled in Parliament or the relevant legislature at least 7 days prior to the discussion of the department's budget vote.

5.2.2 The strategic plan must –

(a) cover a period of three years and be consistent with the institution's published medium term expenditure estimates;

(b) include specific Constitutional and other legislative, functional and policy mandates that indicate the output deliverables for which the institution is responsible;

(c) include policy developments and legislative changes that influence programme spending plans over the three-year period;

(d) include the measurable objectives, expected outcomes, programme outputs, indicators (measures) and targets of the institution's programmes ;

(e) include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance of physical assets;

(f) include details of proposed acquisitions of financial assets or capital transfers and plans for the management of financial assets and liabilities;

(g) include multi-year projections of income and projected receipts from the sale of assets;

(h) include details of the Service Delivery Improvement Programme;

(i) include details of proposed information technology acquisition or expansion in reference to an information technology plan; and

(j) for departments, include the requirements of Chapter 1, Part III B of the *Public Service Regulations*, 2001.

5.2.3 The strategic plan must form the basis for the annual reports of accounting officers as required by sections 40(1)(d) and (e) of the Act.

5.3 Evaluation of performance [Section 27(4) read with 36(5) of the PFMA]

5.3.1 The accounting officer of an institution must establish procedures for reporting quarterly **[reporting]** against its strategic plan **[to the executive authority]** in order to facilitate effective performance monitoring, evaluation and corrective action. Such quarterly reports must be submitted to the executive authority.

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Budgeting and related matters

6.1 Annual budget circular

6.1.1 The accounting officer of a department must comply with any annual budget circulars issued by the relevant treasury. Budget circulars issued by provincial treasuries must be consistent with any budget circular issued by the National Treasury to provincial treasuries.

6.1.2 The accounting officer of a constitutional institution or the accounting authority of a public entity who receives transfers and subsidies **[payments]** appropriated by vote must provide such information as may be required by the accounting officer responsible for the vote for the purposes of complying with a budget circular. A budget submission by such a constitutional institution or public entity must be made through the accounting officer of the department responsible for transfers and subsidies **[payments]** to that constitutional institution or public entity.

6.1.3 An accounting officer of a budget vote must ensure that the budget submission for that vote includes appropriate supporting information in respect of constitutional institutions and public entities receiving transfers and subsidies **[payments]** on that vote.

6.2 Formats of the annual budget [Section 27(3) of the PFMA]

6.2.1 The annual budget documentation, as presented to Parliament or a provincial legislature, must conform to the formats as determined by the National Treasury.

6.3 Virement [Section 43 of the PFMA]

6.3.1 For purposes of section 43(1) of the Act –

(a) **[personnel expenditure]** compensation of employees and transfers and subsidies to other institutions, excluding transfers of regional service council levies and municipal rates and taxes, may not be increased without approval of the relevant treasury;

(b) new transfers and subsidies may not be introduced without the approval of the relevant treasury; **[and]**

(c) allocations earmarked by the relevant treasury for a specific purpose (excluding **[personnel expenditure]** compensation of employees) may not be used for other purposes, except with its approval, and

(d) virement of funds from compensation of employees to transfers and subsidies for the payment of severance/exit packages are excluded from the provisions of (a) and (b).

6.4 Rollovers [Sections 30(2)(g) and 31(2)(g) of the PFMA]

6.4.1 Funds appropriated but not spent in a particular financial year may be rolled over to a subsequent year subject to approval of the relevant treasury. Such approval will be guided by the following limitations–

(a) ***[Capital expenditure]****Payments for capital assets:* Unspent funds on **[capital expenditure]** payments for capital assets may only be rolled over to finalise projects or asset acquisitions still in progress.

(b) *Transfers and subsidies* ***[payments]****:* Savings on transfers and subsidies **[payments]** may not be rolled over for purposes other than originally voted for.

(c) *Current expenditure:* Savings on **[personnel expenditure]** compensation for employees may not be rolled over. A maximum of five per cent of a department's **[non-personnel]** non-compensation for employees current expenditure may be rolled over.

6.4.2 Requests for rollovers must be submitted to the relevant treasury on or before the last working day of April, in a format determined by the National Treasury and must include-

(a) the purpose for which the funds were appropriated;
(b) the reasons why the funds were not spent;
(c) proposed changes to the use of the funds, if any; and;
(d) a disbursement schedule indicating the month(s) in which the expenditure is expected to be incurred.

6.4.3 Funds for a specific purpose may not be rolled over for more than one financial year, unless approved in advance by the relevant treasury.

6.5 Transfer of functions [Section 42 of the PFMA]

6.5.1 Where a function is to be transferred between votes during a financial year, the relevant treasury must be consulted in advance, to facilitate any request for the resulting transfer of funds voted for that function in terms of section 33 of the Act. In the absence of agreement between the affected departments on the amount of funds to be transferred, the relevant treasury will determine the funds to be shifted.

6.5.2 Should the Minister of Public Service and Administration or a Premier of a province make a determination regarding the transfer of a function between departments in terms of the Public Service Act, 1994, that determination must accompany a request for the transfer of funds as per paragraph 6.5.1. Should the Minister of Public Service and Administration or a Premier approve a function transfer after the finalisation of the adjustments estimates, it must be dealt with on a recoverable basis.

6.5.3 Before seeking formal approval from the Minister of Public Service and Administration or the Premier of a province for any transfer of functions to another sphere of government, the transferring accounting officer must first seek the approval of the relevant treasury or treasuries on any funding arrangements.

6.5.4 The transfer of functions to provinces and municipalities must be dealt with in terms of the annual Division of Revenue Act.

6.6 **Additional funds through an adjustments budget** [Sections 30(2)(b) and 31(2)(b) of the PFMA]

6.6.1 For purposes of an adjustments budget, the following will not be considered unforeseeable and unavoidable expenditure –

(a) expenditure that, although known when finalising the estimates of expenditure, could not be accommodated within allocations;

(b) tariff adjustments and price increases; and

(c) extensions of existing services and the creation of new services that are not unforeseeable and unavoidable.

6.6.2 The department requesting additional funds through an adjustments budget must submit a memorandum to the relevant treasury, the Cabinet/EXCO Secretariat and any treasury committee of the Cabinet/EXCO, on a date determined by the relevant treasury.

6.6.3 Where a national adjustments budget allocates funds to a province, the relevant provincial treasury must table an adjustments budget within 30 days of the tabling of the national adjustments budget, or within such longer period as the National Treasury may approve.

6.7 Definitions introduced by the new Economic Reporting Format

6.7.1 For purposes of ensuring alignment between the new Economic Reporting Format, the Public Finance Management Act, 1999 and the Treasury Regulations, the following terms must be used interchangeably:

(a) *Personnel expenditure* referred to in the Act is the same as *compensation of employees* in the new Economic Reporting Format;

(b) *Transfer* referred to in the Act is the same as *transfers and subsidies* in the new Economic Reporting Format; and

(c) *Capital expenditure* referred to in the Act is the same as *payments for capital assets* in the new Economic Reporting Format.

PART 4

Revenue and expenditure management

7

Revenue management

7.1 Application

7.1.1 This regulation applies to the identification, collection, recording and safeguarding of all revenue for which an institution is responsible.

7.2 Responsibility for revenue management

7.2.1 The accounting officer of an institution must manage revenue efficiently and effectively by developing and implementing appropriate processes that provide for the identification, collection, recording, reconciliation and safeguarding of information about revenue.

7.3 Services rendered by the state

7.3.1 The accounting officer of an institution must review, at least annually when finalising the budget, all fees, charges or the rates, scales or tariffs of fees and charges that are not or cannot be fixed by any law and that relate to revenue accruing to a revenue fund. The accounting officer must obtain approval from the relevant treasury for the proposed tariff structure.

7.3.2 Information on the tariff structure must be disclosed in the annual report, including information on exemptions, discounts, free services and any other aspect of material influence on the revenue yield.

8

Expenditure management

8.1 Responsibility of the accounting officer [Section 76(4)(b) of the PFMA]

8.1.1 The accounting officer of an institution must ensure that internal procedures and internal control measures are in place for payment approval and processing. These internal controls should provide reasonable assurance that all expenditure is necessary, appropriate, paid promptly and is adequately recorded and reported.

8.2 Approval of expenditure [Section 38(1)(f) and 76(4)(b) of the PFMA]

8.2.1 An official of an institution may not spend or commit public money except with the approval (either in writing or by duly authorised electronic means) of the accounting officer or a properly delegated or authorised officer.

8.2.2 Before approving expenditure or incurring a commitment to spend, the delegated or authorised official must ensure compliance with any limitations or conditions attached to the delegation or authorisation.

8.2.3 Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgement.

8.3 [Personnel costs] Compensation of employees [Section 76(4)(b) of the PFMA]

8.3.1 Activities relating to the authorisation of appointments, the authorisation of payments and the recording of those payments may not be performed by the same person.

8.3.2 The accounting officer of an institution must ensure that the **[personnel]** costs related to compensation of employees **[of all appointees]**, as well as promotion and salary increases, can be met within the budgetary allocation of the institution.

8.3.3 Unless otherwise determined by the National Treasury, personnel are divided into the following groups for the payment of salaries –

(a) *Group A:* Persons who must be paid on the 15th day of the month, or if it is not a working day, on the last working day preceding the 15th. These include –

(i) persons appointed permanently on the fixed establishment and employed in terms of the Public Service Act, 1994; and

(ii) persons appointed on contract in terms of section 8(1)(c)(ii) of the Public Service Act, 1994.

(b) *Group B:* This group represents personnel paid on the last working day of the month and includes temporary and part-time staff, and persons appointed on probation.

8.3.4 For all employees, the person in charge at the respective pay-points must certify on the date of payment that all persons listed on the payroll report are entitled to payment. Employees paid by cheque must sign the payroll report when collecting their cheques.

8.3.5 Within ten days of being certified, the payroll report must be returned to the chief financial officer. The accounting officer must ensure that all pay-point certificates have been received on a monthly basis.

8.4 Transfer payments and subsidies (excluding Division of Revenue grants and other allocations to municipalities) [Section 38(1)(j) of the PFMA]

8.4.1 An accounting officer must maintain appropriate measures to ensure that transfers and subsidies **[payments]** to entities are applied for their intended purposes. Such measures may include-

(a) regular reporting procedures;
(b) internal and external audit requirements and, where appropriate, submission of audited statements;
(c) regular monitoring procedures;
(d) scheduled or unscheduled inspection visits or reviews of performance; and
(e) any other control measures deemed necessary.

8.4.2 An accounting officer may withhold **[a]** transfers and subsidies **[payment]** to an entity if he or she is satisfied that-

(a) conditions attached to the transfer and subsidy **[payment]** have not been complied with;
(b) financial assistance is no longer required;
(c) the agreed objectives have not been attained; and
(d) the transfer and subsidy **[payment]** does not provide value for money in relation to its purpose or objectives.

8.4.3 Treasury Regulations 8.4.1 and 8.4.2 do not apply to transfers and subsidies to other countries, international bodies, **[and]** to other bodies in terms of economic and financial agreements and to levies and taxes imposed by other levels of government and which are classified as transfers and subsidies in the budgets of departments. Transfers and subsidies in respect of levies and taxes imposed by other levels of government are governed by section 38(1)(e) of the Act.

8.4.4 Transfers and subsidies to other countries, international bodies, **[and]** other bodies in terms of economic and financial agreements and transfers and subsidies to other levels of government for purposes of paying levies and taxes imposed by legislation are exempt from the written assurance, as required by section 38(1)(j) of the Act.

8.5 Division of Revenue Grants [Section 38(1)(i) of the PFMA]

8.5.1 Accounting officers of departments transferring funds to other spheres of government in terms of the annual Division of Revenue Act must comply with the provisions of that Act.

8.6 Other allocations to municipalities

8.6.1 A provincial accounting officer transferring a grant from the provincial revenue fund to a municipality in accordance with an assignment in terms of section 156(4) of The Constitution, 1996 (Act No. 108 of 1996) or a delegation in terms of section 238 of The Constitution, 1996 other than an agency payment in terms of section 238 of The Constitution, 1996 must comply with the relevant provisions of the annual Division of

Revenue Act, sections 9 and 10 of the Municipal Systems Act, 2000 (Act 32 of 2000) and other relevant legislation.

8.7 Charging of expenditure against a particular vote or main division of a vote [Section 76(2)(b) of the PFMA]

8.7.1 Should a dispute arise over which vote or main division of a vote should be charged with any particular expenditure, the relevant treasury must settle the dispute and determine the vote or main division against which the expenditure must be charged.

8.8 Recovery, disallowance and adjustment of payments

8.8.1 Amounts charged to voted funds, which are recovered in the financial year in which payment was made, shall on or before the closing of books of that financial year, be allocated to the main division that was originally debited.

8.8.2 Such amounts which are recovered after the closing of books of a financial year shall be paid to the relevant revenue fund, provided that such amounts have not been allocated to a clearing or suspense account during the financial year in which payment was made.

8.9 Costs related to compensation of employees in respect of transferred officials

8.9.1 In cases where an official is transferred from one department to another during the course of a month, the transferring department shall bear the costs related to compensation of employees in respect of that official up to the end of that particular month.

8.10 Personnel debts

8.10.1 In cases where an official is transferred from one department to another and where such an official is indebted to the transferring department, the receiving department must settle the debt with the transferring department and recover the debt from the official concerned.

8.11 Claims for interdepartmental services

8.11.1 Claims for payments made by one department as an agent for another department shall be submitted within 30 days from the date on which the service was rendered.

8.11.2 Interdepartmental claims must be reflected in the accounts of both departments for the financial year in which the payments were actually made.

9

Unauthorised, irregular, fruitless and wasteful expenditure

9.1 General [Sections 38(1)(g) and 76(2)(e) of the PFMA]

9.1.1 The accounting officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.

9.1.2 When an official of an institution discovers unauthorised, irregular or fruitless and wasteful expenditure, that official must immediately report such expenditure to the accounting officer. In the case of a department, such expenditure must also be reported in the monthly report, as required by section 40(4)(b) of the Act. Irregular expenditure incurred by a department in contravention of tender procedures must also be brought to the notice of the relevant tender board or procurement authority, whichever applicable.

9.1.3 When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the Act, the accounting officer must take into account –

(a) the circumstances of the transgression;

(b) the extent of the expenditure involved; and

(c) the nature and seriousness of the transgression.

9.1.4 The recovery of losses or damages resulting from unauthorised, irregular or fruitless and wasteful expenditure must be dealt with in accordance with regulation 12.

9.1.5 The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the institution.

PART 5

Asset and liability management

10

Asset management

10.1 Responsibility for asset management [Section 38(1)(d) of the PFMA]

10.1.1 The accounting officer of an institution must take full responsibility and ensure that proper control systems exist for assets and that –

(a) preventative mechanisms are in place to eliminate theft, losses, wastage and misuse; and

(b) stock levels are at an optimum and economical level.

10.1.2 The accounting officer must ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical and transparent use of the institution's assets.

[10.2 Disposal and letting of assets [Section 76(1)(k) of the PFMA]

10.2.1 Disposal of movable assets must be at market-related value or by tender or auction, whichever is most advantageous to the state, unless determined otherwise by the relevant treasury.

10.2.2 Any sale of immovable state property must be at market-related value, unless the relevant treasury approves otherwise.

10.2.3 The letting of immovable state property (excluding state housing for officials and political office bearers) must be at market-related tariffs, unless the relevant treasury approves otherwise. No state property may be let free of charge without the prior approval of the relevant treasury.

10.2.4 The accounting officer must review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.]

10.[3]2 Assets accruing to the state by operation of any law [Section 76(2)(i) of the PFMA]

10.[3]2.1 Where any money, property or right accrues to the state by operation of law *(bona vacantia)*, the relevant treasury may exercise all powers, authority and prerogatives, and fulfil any obligation on behalf of the state.

11

Management of debtors

11.1 Application

11.1.1 This regulation applies to all debts accruing to an institution and includes any amount owing to or receivable by the institution, such as invoices for charges for goods or services, fees or fines outstanding.

11.2 Responsibility for the management of debtors [Section 38(1)(c)(i) and (d) of the PFMA]

11.2.1 The accounting officer of an institution must take effective and appropriate steps to timeously collect all money due to the institution including, as necessary –

(a) maintenance of proper accounts and records for all debtors, including amounts received in part payment; and

(b) referral of a matter to the State Attorney, where economical, to consider a legal demand and possible legal proceedings in a court of law.

11.3 Recovery of debts by instalments

11.3.1 Unless otherwise determined by law or agreement, debts owing to the state may, at the discretion of the accounting officer of the institution, be recovered in instalments.

11.4 Writing off of debts owing to the state [Sections 76(1)(e) and 76(4)(a) of the PFMA]

11.4.1 An accounting officer may only write off debts owed to the State if he or she is satisfied that –

(a) all reasonable steps have been taken to recover the debt and the debt is irrecoverable, or,

(b) he or she is convinced that –

(i) recovery of the debt would be uneconomical;

(ii) recovery would cause undue hardship to the debtor or his or her dependants; or

(iii) it would be to the advantage of the state to effect a settlement of its claim or to waive the claim.

11.4.2 An accounting officer must ensure that all debts written off are done in accordance with a write off policy determined by the accounting officer.

11.4.3 All debts written off must be disclosed in the annual financial statements, indicating the policy in terms of which the debt was written off.

11.5 Interest payable on debts to the state [Section 80 of the PFMA]

11.5.1 Interest must be charged on debts to the state at the interest rate determined by the Minister of Finance in terms of section 80 of the Act.

12

Management of losses and claims

12.1 General

12.1.1 Subject to the provisions of this regulation, or any other legislation or agreement, the state will bear its own damages and accident risks and be responsible for all claims and losses of state property where these arise from state activities by an official who is liable in law and who is or was employed by an institution.

12.1.2 Notwithstanding paragraph 12.1.1, the accounting officer of an institution may (if deemed economical and based on a risk assessment) insure motor vehicles, including hired vehicles, or such other movable assets determined by the relevant treasury, but the insurance premium cost may not exceed R250 000 a year on that vote, unless otherwise approved by the relevant treasury.

12.2 Claims against the state through acts or omissions [Section 76(1)(h) of the PFMA]

12.2.1 An institution must accept liability for any loss or damage suffered by another person, which arose from an act or omission of an official as a claim against the state and does not recover compensation from an official, provided the official shall forfeit this cover if he or she, with regard to the act or omission, is liable in law and –

(a) intentionally exceeded his or her powers;
(b) made use of alcohol or drugs;
(c) did not act in the course and scope of his or her employment;
(d) acted recklessly or intentionally;
(e) without prior consultation with the State Attorney, made an admission that was detrimental to the state; or
(f) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim, excluding damage arising from the use of a state vehicle; and
(g) in the case of a loss, damage or claim arising from the use of a state vehicle, the official –
  (i) used the vehicle without authorisation;
  (ii) did not possess a valid driver's licence or other appropriate licence;
  (iii) did not use the vehicle in the interest of the state;
  (iv) allowed unauthorised persons to handle the vehicle; or
  (v) deviated materially from the official journey or route without prior authorisation;

12.2.2 If in doubt, the accounting officer of the institution must consult the State Attorney on questions of law on the implementation of paragraph 12.2.1.

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12.2.3 Where an official has forfeited his or her cover in terms of paragraph 12.2.1, the amount paid by the institution for the loss, damage or claim arising from an act or omission must be recovered from the official concerned.

12.2.4 The State Attorney may only obligate the funds of an institution with the prior written approval of the accounting officer.

12.3 Claims by the state against other persons

12.3.1 If the state suffers a loss or damage and the other person denies liability, the accounting officer must, if deemed economical, refer the matter to the State Attorney for legal action, including the recovery of the value of the loss or damage.

12.4 Claims by officials against the state

12.4.1 If an official sustains a loss or damage in the execution of official duties and is not compensated, the accounting officer may make good the loss or damage provided that the official can prove such loss or damage.

12.5 Losses or damages through criminal acts or omissions [Section 76(1)(f) of the PFMA]

12.5.1 When it appears that the state has suffered losses or damages through criminal acts or possible criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. If liability can be determined, the accounting officer must recover the value of the loss or damage from the person responsible.

12.5.2 The accounting officer may write off losses or damages arising from criminal acts or omissions if, after a thorough investigation, it is found that the loss or damage is irrecoverable.

12.5.3 When movable assets are written off, this must be noted in the asset register.

12.6 Losses and damages through *vis major* and other unavoidable causes [Section 76(1)(e) of the PFMA]

12.6.1 The accounting officer may write off losses and damages that result from *vis major* and other unavoidable causes.

12.7 Losses or damages through acts committed or omitted by officials [Sections 76(1)(b) and 76(4)(a) of the PFMA]

12.7.1 Losses or damages suffered by an institution because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law.

12.7.2 The accounting officer must determine the amount of the loss or damage and, in writing, request that official to pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damage.

12.7.3 A claim against an official must be waived if the conditions in paragraph 12.2.1(a) to (g) are not applicable.

12.7.4 If in doubt, the accounting officer of the institution must consult the State Attorney on questions of law in the implementation of paragraphs 12.7.1 and 12.7.3.

13

Loans, guarantees, leases and other commitments

13.1 General [Section 66 of the PFMA]

13.1.1 The executive authority of a provincial department may not issue a guarantee, security or indemnity that may bind the provincial revenue fund, except with the prior written approval of the MEC for finance in the province.

13.1.2 The accounting officer of a department must ensure that no official in that department or any other person borrows money on behalf of that department, or issues an unauthorised guarantee, security or indemnity. The accounting officer must ensure that appropriate misconduct or criminal proceedings are instituted against any person responsible for transgressions with regard to borrowings, guarantees, securities or indemnities.

13.1.3 Should the accounting officer be responsible for transgressions with regard to borrowings, guarantees, securities or indemnities, the relevant treasury must, as soon as it becomes aware of the transgression, initiate appropriate misconduct or criminal proceedings against the accounting officer.

13.1.4 The accounting officer must report on all known contingent liabilities of the department in its annual report.

13.1.5 This regulation does not preclude the use of credit cards, fleet management cards or other credit facilities repayable within 30 days from the date of statement.

13.2 Lease transactions

13.2.1 For the purpose of this regulation, a lease is regarded as a contract that gives the lessee (the renter) the right to the use of property, plant or equipment for a fixed period of time with a fixed schedule of payments to the lessor (the owner).

13.2.2 The accounting officer of an institution may, for the purpose of conducting the institution's business, enter into lease transactions provided that such transactions are limited to operating leases.

13.2.3 <u>Save for agreements concluded in terms of Treasury Regulation 16,</u> **[The]** <u>the</u> accounting officer may under no circumstances enter into finance leases. For the purpose of this regulation, a lease is considered to be a finance lease if:

(a) the lease transfers ownership of the asset to the lessee by the end of the lease period;

(b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable, so that at the inception of the lease it is reasonably certain that the option will be exercised;

(c) the lease term is for the economic life of the asset even if the title is not transferred;

(d) at the inception of the lease, the present value of the minimum lease payments amount to at least 90% of the fair value of the leased asset;

(e) the leased asset is of a specialised nature such that only the institution can use the asset without major modifications being made; or

[(f) the lessor's losses associated with cancellation of the lease by the lessee is borne by the lessee; or]

[g](f) the leased asset cannot be easily replaced by another asset.

13.2.4 Other factors which individually or in combination could also lead to a lease being classified as a finance lease are:

(a) if the lessee can cancel the lease, the lessor's losses associate with the cancellation are borne by the lessee;

(b) gains or losses from the fluctuation in the fair value of the residual fall to the lessee (for example in the form of a rent rebate equalling most of the sales proceeds at the end of the lease); and

(c) the lessee has the ability to continue with the lease for a secondary period at a rent which is substantially lower than market rent.

13.2.5 The leasing of photocopiers, facsimile machines, PABX boards and other similar office equipment shall be regarded as operating leases even though such leases may fulfil some of the criteria for finance leases, as mentioned in paragraphs 13.2.3 and 13.2.4.

13.3 Provinces

13.3.1 The MEC for finance may raise funds during a financial year for bridging purposes. All bridging finance raised during a financial year must be repaid within 30 days after the end of the financial year.

14

Money and property held in trust

14.1 General

14.1.1 Regulation 15 is not applicable to the management of trust money.

14.2 Responsibility for trust money and property [Section 76(1)(c) of the PFMA]

14.2.1 For purposes of this regulation, trust money or property is money or property that does not belong to the State and that is held by an institution on behalf of other persons or entities in terms of a deed of trust or equivalent instrument that details the specific purposes for which it may be used.

14.2.2 The accounting officer, through the chief financial officer or a duly authorised agent, is responsible for the safekeeping and proper use of trust money and property, in accordance with the relevant deed of trust or equivalent instrument.

14.2.3 The institution, or its duly authorised agent, may charge a fee for the administration of a trust account at rates approved by the board of trustees or, in its absence, as agreed with the trustee. Such fees are payable from the trust account and are revenue accruing to the relevant revenue fund.

14.3 Trust money must be kept in a trust account

14.3.1 The accounting officer must, for each separate portion of trust money –

(a) open and maintain a separate bank account, called a trust account;

(b) assign to the trust account a name or title that clearly identifies the account;

(c) maintain separate accounting records for each trust account, of the transactions, including investment transactions, undertaken; and

(d) annually prepare separate annual financial statements that comply with generally accepted accounting practice.

14.4 Investment of trust money

14.4.1 The accounting officer may, provided that it does not conflict with the terms of the trust arrangement, invest any trust money on such terms and conditions as may be appropriate–

(a) on deposit with any bank within or outside South Africa as approved by the National Treasury;

(b) in public securities issued by the government; or

(c) in other securities approved by the National Treasury.

14.4.2 The proceeds of an investment, including interest and realised capital gains, and all money received from the realisation, sale or conversion of securities, must be treated as money of the trust on whose behalf the money was invested.

PART 6

Frameworks

15

Banking, cash management and investment

15.1 Control of the national and provincial revenue funds [Sections 11 and 21 of the PFMA]

15.1.1 Each treasury is responsible for the effective and efficient management of its revenue fund.

15.1.2 Each treasury must ensure that its revenue fund always has sufficient money for appropriated expenditure and direct charges to meet the progressive cash flow requirements.

15.1.3 Each revenue fund consists, at any point in time, of all cash balances of the fund, derived from the relevant treasury's operating, investing and financing activities.

15.2 Bank account configuration [Sections 7 and 21 of the PFMA]

15.2.1 The bank account configuration for the National Revenue Fund comprises an Exchequer bank account, a Paymaster-General bank account with the South African Reserve Bank, the four tax and loan accounts with commercial banks, and any other bank account opened to facilitate the management of the National Revenue Fund. The National Treasury may open additional accounts on such terms and conditions as it may determine.

15.2.2 Each provincial revenue fund must have a bank account configuration that consists of at least an Exchequer bank account and a Paymaster-General bank account, opened with a commercial bank.

15.2.3 Each head of a provincial treasury must nominate one bank account, which is under the control of the provincial treasury and is part of the provincial revenue fund, as the accredited account into which all transfers from national departments must be deposited.

15.2.4 If the accounting for a department necessitates a separate bank account, the relevant treasury may approve one sub-account within the Paymaster-General account of the relevant revenue fund. Such subaccounts remain an integral part of the bank account configuration of the relevant revenue fund.

15.3 Procurement of banking services by provincial governments

15.3.1 A provincial government must review its banking account arrangements once every five years.

15.3.2 Before appointing any bank for the provision of a service, the province must submit a notice of its intention for such services to all clearing banks, inviting them to submit a bid 30 days after the gazetting of such notice.

15.2.3 Where a bank submits an unsolicited bid, or where a province wants to change its bank account, it must do so in terms of paragraph 15.3.2 after an open bid process where all clearing banks are informed of its intention. The National Treasury and the Auditor-General shall be informed of all unsolicited bids.

15.[3]4 Deposits into the revenue funds [Sections 13 and 22 of the PFMA]

15.**[3]**4.1 In terms of sections 11(3) and 21(2) of the Act, money is paid into a revenue fund by depositing it into a bank account in accordance with the configuration requirements prescribed above.

15.**[3]**4.2 Money deposited into the Paymaster-General account must immediately be available to the relevant treasury for funding expenditure or investment according to its central cash management responsibilities.

15.[4]5 Responsibilities of the South African Revenue Service [Section 12 of the PFMA]

15.**[4]**5.1 The South African Revenue Service must supply the relevant treasury with an annual revenue projection no later than the tenth working day of March preceding the start of the financial year. It must also submit **[the actual collection for the preceding month and an updated monthly revenue projection for the remainder of the year, no later than the 15th working day of each month.]** its actual collections for the preceding month as well as an updated monthly revenue projection for the remainder of the financial year in accordance with dates as determined by the National Treasury.

15.**[4]**5.2 For purposes of section 12 of the Act, the South African Revenue Service must implement measures to ensure that all taxes, levies, duties, fees and other money due to and collected by it for a revenue fund are accounted for and deposited daily into the relevant fund. The relevant treasury must be informed daily of such revenue and monthly on its standard revenue classifications in accordance with dates as determined by the relevant treasuries.

15.[5]6 Responsibilities of departments [Sections 13 and 22 of the PFMA]

15.**[5]**6.1 All revenue received by a department must be paid daily into its Paymaster-General account or, for amounts less than R500, as soon as practicable, but at least by the last working day of the month.

15.**[5]**6.2 No provincial department may receive **[a transfer payment]** transfers and subsidies from a national department or public entity directly; such funds must be deposited into the nominated banking account of the province as required by paragraph **[15.2.3]** 15.3.3.

15.**[5]**6.3 Money collected by a department, which is not classified as revenue, must be paid into the department's Paymaster-General account and accounted for in its ledger. This includes money received for agency services provided to another department.

15.[6]7 Withdrawals from and investments in revenue funds [Sections 7(4) and 24(3) of the PFMA]

15.**[6]**7.1 Provincial treasuries may, in accordance with section 24 of the Act, temporarily invest surplus money in the provincial revenue fund in an account in South Africa, approved as part of the bank account configuration of the fund.

15.[7]8 Requisitioning of funds by departments

15.[7]8.1 When requesting the transfer of appropriated funds, accounting officers of national departments must submit such requisitions to the National Treasury, in accordance with approved cash flow estimates, at least four full working days before the end of the month preceding the month in which the funds are required. Provincial treasuries may determine their own time-scales in this regard.

15.[7]8.2 Provincial treasuries will receive their grants from the National Revenue Fund in accordance with the payment schedule determined in terms of the annual Division of Revenue Act.

15.[8]9 Surrender of voted surplus funds

15.[8]9.1 At the end of each financial year, and after the books of account of a department have been closed, the accounting officer must surrender to the relevant treasury any unexpended voted money, for re-depositing into the Exchequer bank account of the relevant revenue fund.

15.[9]10 Accounting and reporting

15.[9]10.1 Each treasury must account daily for the cash movements of all bank accounts in the books of its revenue fund.

15.[10]11 Banking and cash management

15.[10]11.1 General [Sections 7 and 21 of the PFMA]

15.[10]11.1.1 The accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

15. [10]11.1.2 For purposes of this regulation, sound cash management includes –

(a) collecting revenue when it is due and banking it promptly;

(b) making payments, including transfers and subsidies to other levels of government and non-government entities, no earlier than necessary, with due regard for efficient, effective and economical programme delivery and the government's normal terms for account payments;

(c) avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier;

(d) accepting discounts to effect early payment only when the payment has been included in the monthly cash flow estimates provided to the relevant treasury;

(e) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the government are collected and banked promptly;

(f) accurately forecasting the institution's cash flow requirements so that the National Treasury can optimise its central cash management responsibilities on behalf of the government;

(g) timing the in and outflow of cash;

(h) recognising the time value of money, i.e. economically, efficiently and effectively managing cash;

(i) taking any other action that avoids locking up money unnecessarily and inefficiently, such as managing inventories to the minimum level necessary for efficient and effective programme delivery, and selling surplus or underutilised assets;

(j) performing bank reconciliations on a daily basis to detect any unauthorised entries;

(k) ensuring that dishonoured warrant vouchers and cheques are followed up immediately; and

(l) the separation of duties to minimise the incidence of fraud.

15.[10]11.2Cash flow

15.[10]11.2.1 The accounting officer must annually submit to the relevant treasury a breakdown of anticipated revenue and expenditure in the format determined by the National Treasury, no later than the last working day of February preceding the financial year to which it relates.

15.[10]11.2.2 Provincial treasuries must submit to the National Treasury, by the 15th working day of March, projections of their expenditure, revenue and borrowings, in a format determined by the National Treasury.

15.[10]11.2.3 Once such amounts have been approved, modified as necessary after consultation with the relevant treasury, the accounting officer may not draw from the revenue fund more than the amount approved for a month, without prior written approval from the relevant treasury.

15.[10]11.2.4 Should the accounting officer need to adjust the approved projections, the proposed adjustments must be motivated to the relevant treasury for evaluation against the availability of funds in the Exchequer.

15.[10]11.3Banking arrangements [Section 7(2) of the PFMA]

15.[10]11.3.1 Institutions may not open a bank account without the written approval of the relevant treasury. Only bank accounts approved after 1 April 2001 shall be considered as valid.

15.[10]11.3.2 The National Treasury will negotiate with the approved clearing banks for appropriate banking services on a regular basis for national departments and constitutional institutions.

15.[11]12 Private money, private bank accounts and cashing private cheques

15.[11]12.1 Private money may not be deposited into an official bank account, except in accordance with the provisions relating to money held in trust for other persons or bodies, nor may state money be paid into a private bank account.

15.[11]12.2 The safekeeping of private money or personal possessions in a state safe or strongroom is prohibited. However, an accounting officer or an official authorised by the accounting officer may approve arrangements for safeguarding personal effects reasonably held on official premises in the course of official duty (e.g. by providing lockable rooms for staff).

15.[11]12.3 State money may not be used to cash private cheques.