

15.[12]13 Warrant vouchers, cheques and electronic payments

[Section 76(2)(h) of the PFMA]

- 15.[12]13.1 Accounting officers of departments must assign authority in writing to officials to approve warrant vouchers, cheques or electronic payments.
- 15.[12]13.2 Only authorised officials may sign hand-drawn vouchers or cheques and must initial the counterfoils.
- 15.[12]13.3 All payments in excess of R2 000 must be effected electronically unless otherwise approved by the relevant treasury. Payments may not be split to circumvent this regulation and any non-compliance with this regulation constitutes financial misconduct.
- 15.[12]13.4 All warrant vouchers and cheques must be crossed "NOT NEGOTIABLE" and [should also preferably be crossed] "NOT TRANSFERABLE" between parallel lines. The cancellation of crossings is not permitted.
- 15.[12]13.5 When an issued warrant voucher or cheque is lost, stolen or damaged, an instruction to stop payment must immediately be issued to the responsible bank. Once confirmation has been received that the cheque was stopped, the transaction must be reversed and a new warrant voucher or cheque issued and accounted for.
- 15.[12]13.6 All cashed warrant vouchers of national departments that have not been captured on the respective financial systems will be returned as unpaid.

15.14 Stale warrant vouchers and cheques

- 15.14.1 The amount related to a warrant voucher or cheque that is still outstanding after the expiry of its validity must be paid into the relevant revenue fund.
- 15.14.2 An amount subsequently claimed in respect of a warrant voucher or cheque that has been credited to revenue shall be paid from current revenue collections.

16

Public-private partnerships

16.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

[“affordable”, in relation to a public-private partnership (PPP) agreement, means that the financial commitments to be incurred by an institution in terms of the agreement can be met by funds -

- (a) designated within the institution’s existing budget for the institutional function to which the agreement relates; and
- (b) destined for the institution in accordance with the relevant treasury’s future budgetary projections for the institution.

“institution”, in relation to this Treasury Regulation, includes a department, constitutional institution and public entity listed in Schedules 3A, 3B, 3C and 3D of the Act.

“institutional function” means -

- (a) a service, task, assignment or other function that an institution performs -
 - (i) in the public interest; or
 - (ii) on behalf of the public service generally; or
- (b) any part or component of such a service, task, assignment or other function;
- (c) but excludes a service, task, assignment or other function that is not of an ongoing nature.

“private party”, in relation to a PPP agreement, means a party to a PPP agreement other than -

- (a) an institution to which the Act applies;
- (b) a municipality or an enterprise or other entity controlled by one or more municipalities; or
- (c) the accounting officer, accounting authority or other person or body acting on behalf of an institution, municipality, enterprise or entity referred to in paragraph (a) or (b).

“property”, in relation to a PPP agreement, includes all movable and immovable property belonging to the state as well as intellectual property rights vested in the state;

“project officer” means the person identified by the accounting officer or accounting authority to manage the project from its inception to completion;

“public-private partnership means a commercial transaction between an institution and a private party in terms of which -

- (a) the private party either performs an institutional function on behalf of the institution for a specified or indefinite period; or acquires the use of state property for its own commercial purposes for a specified or indefinite period;
- (b) the private party receives a benefit for performing the function or by utilising state property, either by way of:
 - (i) compensation from a revenue fund;

- (ii) charges or fees collected by the private party from users or customers of a service provided to them; or
- (iii) a combination of such compensation and such charges or fees;

“public private partnership (PPP) agreement” means an agreement approved in terms of these *Regulations*;

“value for money” means that the provision of the institutional function by a private party in terms of the public-private partnership agreement results in a net benefit to the institution, defined in terms of cost, price, quality, quantity, or risk transfer, or a combination thereof.

16.2 Exclusive competency of accounting officers and accounting authorities

- 16.2.1 Only an accounting officer or an accounting authority may enter into a PPP agreement on behalf of the institution.

16.3 Treasury approval

- 16.3.1 The accounting officer or accounting authority may not proceed with a PPP without the prior written approval of –
- (a) the National Treasury; or
 - (b) the relevant provincial treasury, if it is a provincial institution and the National Treasury has, in terms of section 10(1)(b) of the Act, delegated the appropriate powers to the provincial treasury.
- 16.3.2 The relevant treasury may grant such approval only if it is satisfied that the proposed PPP will –
- (a) provide value for money;
 - (b) be affordable for the institution; and
 - (c) transfer appropriate technical, operational and financial risk to the private party.
- 16.3.3 When a provincial treasury grants such approvals, it must exercise its delegated powers subject to any limitations and qualifications in terms of the National Treasury’s delegation.
- 16.3.4 As soon as an institution identifies a PPP, the accounting officer or accounting authority–
- (a) must inform the relevant treasury of the expertise within that institution to proceed with a PPP;
 - (b) if the relevant treasury so requests, must appoint a specialist consultant for this purpose; and
 - (c) must appoint a project officer from within or outside the institution who is capable and appropriately qualified to manage the project.

16.4 Feasibility study – Treasury Approval: I

- 16.4.1 To determine whether a proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority must undertake a feasibility study that–

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- (a) explains the strategic and operational benefits of the PPP agreement for the institution in terms of its strategic objectives and government policy;
- (b) describes in specific terms –
 - (i) the nature of the institutional function concerned;
 - (ii) the extent to which this function, or the use of state property, both legally and by nature, can be performed by a private party in terms of a PPP agreement; and
 - (iii) what other forms of PPP agreement were considered, and how the proposed form was selected;
- (c) assesses whether the agreement will –
 - (i) provide value for money;
 - (ii) be affordable for the institution; and
 - (iii) transfer appropriate technical, operational and financial risk to the private party.
- (d) includes any relevant information, figures and the economic criteria used to justify these assessments; and
- (e) explains the capacity of the institution to effectively enforce the agreement, including to monitor and regulate implementation of and performance in terms of the agreement.

16.4.2 An institution may not proceed with the procurement phase of a PPP without written treasury approval for the feasibility study on aspects relating to the affordability, value for money and appropriate technical, operational and financial risk transfer.

16.4.3 The treasury approval referred to in paragraph 16.4.2 shall be regarded as Treasury Approval: I.

16.5 Submission to obtain treasury approval

16.5.1 A written application for the feasibility study approval (Treasury Approval: I) must be submitted to the relevant treasury together with the feasibility study containing the following –

- (a) a brief “sector needs and options analysis” and priority ranking of the PPP being proposed on the basis of this analysis;
- (b) demonstrated affordability, risk transfer and an initial indication of how value for money will be realised; and
- (c) the institutional arrangements for monitoring the implementation of the PPP.

16.5.2 If at any time during the project, any of the assumptions in the feasibility report differ materially from the feasibility study approval, especially with regard to affordability, value for money and appropriate technical, operational and financial risk transfer, the accounting officer or accounting authority must immediately –

- (a) notify the relevant treasury of the intended revision;
- (b) submit details of the revision to the relevant treasury;
- (c) indicate the impact of the intended revision on the assumptions of the feasibility study relating to affordability, value for money and appropriate technical, operational and financial risk transfer; and
- (d) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised treasury approval.

- 16.6 Procurement – Treasury approvals: IIA and IIB [Section 76(4) of the PFMA]**
- 16.6.1** Prior to the issuing of procurement documentation to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including at least the main terms of the proposed agreement, the aspects of affordability, value for money and risk transfer.
- 16.6.2** The treasury approval referred to in paragraph 16.6.1 shall be regarded as Treasury Approval: IIA.
- 16.6.3** A PPP agreement must be procured in accordance with applicable procurement legislation.
- 16.6.4** The procurement procedure must include –
- (a) an open and transparent pre-qualification process;
 - (b) a competitive bidding process in which only pre-qualified organisations may participate; and
 - (c) criteria for the evaluation of bids to identify the bid that represents the best value for money.
- 16.6.5** After the evaluation of the bids but prior to entering into negotiations with any of the bidders, the institution must submit a report for approval by the relevant treasury, demonstrating the means by which affordability, quantification of value for money, appropriate technical, operational and financial risk transfer was established.
- 16.6.6** The approval referred to in paragraph 16.6.5 shall be regarded as Treasury Approval: IIB.
- 16.6.7** The procurement procedure may include –
- (a) a preference for categories of bidders, in terms of the relevant legislation, such as persons disadvantaged by unfair discrimination, provided that this does not compromise the value for money requirement; and
 - (b) incentives for recognising and rewarding genuine innovators in the case of unsolicited proposals, provided that these incentives do not compromise the competitive bidding process.
- 16.7 Contracting public-private partnership agreements - Treasury approval: III**
- 16.7.1** After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution enters into a PPP agreement, he or she must obtain approval from the relevant treasury –
- (a) that the PPP agreement contains the affordability, value for money and appropriate technical, operational and risk transfer in regulation 16.4.2 or revised in terms of paragraph 16.5.2; and
 - (b) for a management plan that explains the capacity of the institution to effectively enforce the agreement including, to monitor and regulate implementation of and performance in terms of the agreement.
- 16.7.2** The treasury approval referred to in paragraph 16.7.1 shall be referred to as Treasury Approval: III.

*Treasury Regulations: PFMA***16.8 Management of public-private partnership agreements**

16.8.1 The accounting officer or accounting authority is responsible for ensuring that a PPP agreement is properly enforced, and must establish mechanisms and procedures for –

- (a) monitoring and regulating the implementation of, and performance in terms of, the agreement;
- (b) liaising with the private party;
- (c) resolving disputes and differences with the private party;
- (d) generally overseeing the day-to-day management of the agreement; and
- (e) reporting on the management of the agreement in the institution's annual report.

16.8.2 A PPP agreement does not divest the accounting officer or accounting authority of the responsibility for ensuring that the relevant institutional function is effectively and efficiently performed in the public interest.

16.9 Amendment of public-private partnership agreements

16.9.1 Only the accounting officer or accounting authority may enter into an agreement to amend a PPP agreement.

16.9.2 Written approval of the relevant treasury is required for material amendments to PPP agreements.

16.9.3 The relevant treasury will approve an amendment only if it is satisfied that a proper risk assessment of proposed changes have been completed and the amended PPP agreement will continue to –

- (a) provide value for money;
- (b) be affordable for the institution; and
- (c) transfer appropriate technical, operational and financial risk to the private party.

16.9.4 The accounting officer or accounting authority must substantially follow the procedure prescribed by clauses 16.3 and 16.5 for obtaining treasury approval.

16.10 Certain agreements not binding on the state

16.10.1 A PPP agreement or an agreement amending a PPP agreement does not bind the state if the agreement was entered into on behalf of an institution –

- (a) by a person other than the accounting officer or accounting authority of the institution; or
- (b) without the approval of the relevant treasury.

16.11 Exemptions

16.11.1 The National Treasury may under certain terms and conditions and upon written application from an institution, exempt that institution from the application of this regulation or from any commercial transaction that falls within the definition of “public private partnership”.

16.12 General

16.12.1 An agreement between an institution and a private party for the latter to perform an institutional function without accepting the significant risks is not a PPP and must be dealt with as a procurement transaction.]

“affordability” means that the financial commitments to be incurred by an institution in terms of the PPP agreement can be met by funds –

- (a) designated within the institution’s existing budget for the institutional function to which the agreement relates; and/or
- (b) destined for the institution in accordance with the relevant treasury’s future budgetary projections for the institution;

“institution” means a department, a constitutional institution, a public entity listed, or required to be listed in Schedules 3A, 3B, 3C and 3D to the Act, or any subsidiary of any such public entity.

“institutional function” means –

- (a) a service, task, assignment or other function that an institution is entitled or obliged to perform –
 - (i) in the public interest; or
 - (ii) on behalf of the public service generally; or
- (b) any part or component of or any service, task, assignment or other function performed or to be performed in support of such a service, task, assignment or other function;

“private party” means a party to a PPP agreement, other than –

- (a) an institution to which the Act applies;
- (b) a municipality or a municipal entity under the ownership control of one or more municipalities; or
- (c) the accounting officer, accounting authority or other person or body acting on behalf of an institution, municipality or municipal entity referred to in paragraph (a) or (b);

“project officer” means a person identified by the accounting officer or accounting authority of an institution, who is capable of managing and is appropriately qualified to manage a PPP to which that institution is party from its inception to its expiry or termination;

“public-private partnership” or “PPP” means a commercial transaction between an institution and a private party in terms of which the private party –

- (a) performs an institutional function on behalf of the institution; and / or
- (b) acquires the use of state property for its own commercial purposes; and
- (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property; and
- (d) receives a benefit for performing the institutional function or from utilising the state property, either by way of:
 - (i) consideration to be paid by the institution which derives from a revenue fund or, where the institution is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or
 - (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or

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(iii) a combination of such consideration and such charges or fees;

“preferred bidder” means the bidder, including any bidding consortium, to be appointed as preferred bidder in terms of regulation 16.5.4;

“PPP agreement” means a written contract recording the terms of a PPP concluded between an institution and a private party;

“relevant treasury” means the National Treasury unless delegated in terms of section 10(1)(b) of the Act;

“state property” includes all movable and immovable property belonging to the state as well as intellectual property rights vested in the state;

“transaction advisor” means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement; and

“value for money” means that the provision of the institutional function or the use of state property by a private party in terms of the PPP agreement results in a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.

16.2 Exclusive competency of accounting officers and accounting authorities

16.2.1 Only the accounting officer or the accounting authority of an institution may enter into a PPP agreement on behalf of that institution.

16.3 Project inception

16.3.1 As soon as the institution identifies a project that may be concluded as a PPP, the accounting officer or accounting authority must in writing-

- (a) register the PPP with the relevant treasury;
- (b) inform the relevant treasury of the expertise within that institution to proceed with a PPP;
- (c) appoint a project officer from within or outside the institution; and
- (d) appoint a transaction advisor if the relevant treasury so requests.

16.4 Feasibility study – Treasury Approval: I

16.4.1 To determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that-

- (a) explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;
- (b) describes in specific terms –
 - (i) in the case of a PPP involving the performance of an institutional function, the nature of the institutional function concerned and the extent to which this institutional function, both legally and by nature, may be performed by a private party; and

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- (ii) in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;
 - (c) in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;
 - (d) sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;
 - (e) demonstrates the anticipated value for money to be achieved by the PPP; and
 - (f) explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.
- 16.4.2 An institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.
- 16.4.3 The treasury approval referred to in regulation 16.4.2 shall be regarded as Treasury Approval: I.
- 16.4.4 If at any time after Treasury Approval: I has been granted in respect of the feasibility study of a PPP, but before the grant of Treasury Approval: III in respect of the PPP agreement recording that PPP, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the accounting officer or accounting authority of the institution must immediately –
- (a) provide the relevant treasury with details of the intended revision, including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and
 - (b) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised Treasury Approval: I.

16.5 Procurement – Treasury approvals IIA and IIB [Section 76(4) of the PFMA]

- 16.5.1 Prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including the draft PPP agreement.
- 16.5.2 The treasury approval referred to in regulation 16.5.1 shall be regarded as Treasury Approval: IIA.
- 16.5.3 The procurement procedure –
- (a) must be in accordance with a system that is fair, equitable, transparent, competitive and cost-effective; and
 - (b) must include a preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.
- 16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, demonstrating how these criteria were

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satisfied in the preferred bid and including any other information as required by the relevant treasury.

16.5.5 The treasury approval referred to in regulation 16.5.4 shall be regarded as Treasury Approval: IIB.

16.6 Contracting PPP agreements - Treasury Approval: III

16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury –

- (a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of regulation 16.4.2 or as revised in terms of regulation 16.4.4;
- (b) for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP; and
- (c) that a satisfactory due diligence including a legal due diligence has been completed in respect of the accounting officer or accounting authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement.

16.6.2 The treasury approval referred to in regulation 16.6.1 shall be referred to as Treasury Approval: III.

16.7 Management of PPP agreements

16.7.1 The accounting officer or accounting authority of the institution that is party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in Treasury Approval: III for –

- (a) measuring the outputs of the PPP agreement;
- (b) monitoring the implementation of the PPP agreement and performances under the PPP agreement;
- (c) liaising with the private party;
- (d) resolving disputes and differences with the private party;
- (e) generally overseeing the day-to-day management of the PPP agreement; and
- (f) reporting on the PPP agreement in the institution's annual report.

16.7.2 A PPP agreement involving the performance of an institutional function does not divest the accounting officer or accounting authority of the institution concerned of the responsibility for ensuring that such institutional function is effectively and efficiently performed in the public interest or on behalf of the public service.

16.7.3 A PPP agreement involving the use of state property by a private party does not divest the accounting officer or accounting authority of the institution concerned of the responsibility for ensuring that such state property is appropriately protected against forfeiture, theft, loss, wastage and misuse.

16.8 Amendment and variation of PPP agreements

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16.8.1 The prior written approval of the relevant treasury is required for any material amendments to a PPP agreement including any material variations to the outputs therein, or any waivers contemplated or provided for in the PPP agreement.

16.8.2 The relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide –

(a) value for money;

(b) affordability; and

(c) substantial technical, operational and financial risk transfer to the private party.

16.8.3 The accounting officer or accounting authority must substantially follow the procedure prescribed by regulations 16.4 and 16.6 for obtaining such treasury approval.

16.9 Agreements binding on the state

16.9.1 A PPP agreement or an agreement amending a PPP agreement, binds the state only if the agreement was entered into on behalf of an institution –

(a) by the accounting officer or accounting authority of that institution; and

(b) if all treasury approvals required in terms of this regulation 16 have been granted by the relevant treasury in respect of the PPP.

16.10 Exemptions

16.10.1 The relevant treasury may, subject to any terms and conditions that it considers appropriate and upon written application from an institution, exempt that institution whether in relation to a specific PPP or in general, from complying with any or all of the provisions of this regulation 16.

16A

Supply Chain Management

16A.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –

“institution” means a department, constitutional institution or public entity listed in Schedule 3A and 3C of the Act; and

“official” means a person in the employ of a department, constitutional institution or public entity listed in Schedule 3A and 3C of the Act.

16A.2 Application

16A2.1 This framework applies to all –

- (a) departments;
- (b) constitutional institutions; and
- (c) public entities listed in Schedules 3A and 3C to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

16A.3 Supply chain management system

16A3.1 The accounting officer or accounting authority of an institution to which these regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for –

- (a) the acquisition of goods and services; and
- (b) the disposal and letting of state assets, including the disposal of goods no longer required.

16A3.2 A supply chain management system referred to in paragraph 16A.3.1 must –

- (a) be fair, equitable, transparent, competitive and cost effective;
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (d) provide for at least the following: –
 - (i) demand management;
 - (ii) acquisition management;
 - (iii) logistics management;
 - (iv) disposal management;
 - (v) risk management; and

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- (vi) regular assessment of supply chain performance.

16A.4 Establishment of supply chain management units

- 16A4.1 The accounting officer or accounting authority must establish a separate supply chain management unit within the office of that institution's chief financial officer, to implement the institution's supply chain management system.

16A.5 Training of supply chain management officials

- 16A5.1 The accounting officer or accounting authority must ensure that officials implementing the institution's supply chain management system are trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by the National Treasury.

16A.6 Procurement of goods and services

- 16A6.1 Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury.

- 16A6.2 A supply chain management system must, in the case of procurement through a bidding process, provide for –

- (a) the adjudication of bids through a bid committee;
- (b) the establishment, composition and functioning of bid committees;
- (c) the selection of bid committee members;
- (d) bidding procedures; and
- (e) the approval of bid committee recommendations.

- 16A6.3 The accounting officer or accounting authority must ensure that –

- (a) bid documentation and the general conditions of a contract are in accordance with –

- (i) the instructions of the National Treasury; or
- (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;

- (b) bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (c) bids are advertised in at least the *Government Tender Bulletin* for a minimum period of 30 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;
- (d) awards are published in the *Government Tender Bulletin* and other media by means of which the bids were advertised;

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- (e) contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act;
- (f) Treasury Regulation 16 is complied with when goods or services are procured through public private partnerships or as part of a public private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

16A.7 Disposal and letting of state assets

16A7.1 Disposal of movable assets must be at market-related value or by way of price quotations, competitive bids or auction, whichever is most advantageous to the state, unless determined otherwise by the relevant treasury.

16A7.2 Notwithstanding the provisions of paragraph 16A7.1, accounting officers and accounting authorities may transfer movable assets free of charge to other departments, constitutional institutions or public entities by means of formal vouchers.

16A7.3 Any sale of immovable state property must be at market-related value, unless the relevant treasury approves otherwise.

16A7.4 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.

16A7.5 The accounting officer or accounting authority 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.

16A7.6 The accounting officer or accounting authority must, when disposing of firearms, obtain the approval of the National Conventional Arms Control Committee for any sale or donation of firearms to any person or institution within or outside the Republic.

16A7.7 The accounting officer or accounting authority must, when disposing of computer equipment, approach the relevant education department to determine whether any educational institution is in need of such equipment. If an educational institution needs such equipment, the relevant department of education must arrange for its transport to such an institution at its own cost.

16A.8 All role players to comply to ethical standards

16A8.1 All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote –

- (a) mutual trust and respect; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

16A8.2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.

16A8.3 A supply chain management official or other role player –

- (a) must recognise and disclose any conflict of interest that may arise;
- (b) must treat all suppliers and potential suppliers equitably;
- (c) may not use their position for private gain or to improperly benefit another person;
- (d) must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;
- (e) must be scrupulous in their use of public property; and
- (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.

16A8.4 If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –

- (a) disclose that interest; and
- (b) withdraw from participating in any manner whatsoever in the process relating to that contract.

16A8.5 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system must immediately report the breach or failure to the accounting officer or accounting authority, in writing.

16A.9 Avoiding abuse of supply chain management system

16A9.1 The accounting officer or accounting authority must –

- (a) take all reasonable steps to prevent abuse of the supply chain management system;
- (b) investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified –
 - (i) take steps against such official or other role player and inform the relevant treasury of such steps; and
 - (ii) report any conduct that may constitute an offence to the South African Police Service;
- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, nor any of its directors, are listed as companies or persons prohibited from doing business with the public sector;
- (d) reject any bid from a supplier who fails to provide written proof from the South African Revenue Service that that supplier either has no outstanding

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tax obligations or has made arrangements to meet outstanding tax obligations;

(e) reject a proposal for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract; or

(f) cancel a contract awarded to a supplier of goods or services –

(i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or

(ii) if any official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of that contract that benefited that supplier.

16A9.2 The accounting officer or accounting authority –

(a) may disregard the bid of any bidder if that bidder, or any of its directors –

(i) have abused the institution's supply chain management system

(ii) have committed fraud or any other improper conduct in relation to such system; or

(iii) have failed to perform on any previous contract; and

(b) must inform the relevant treasury of any action taken in terms of paragraph (a).

16A9.3 The National Treasury and each provincial treasury must establish a mechanism:-

(a) to receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards; and

(b) to make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of criminal steps to be taken in the case of corruption, fraud or other criminal offences.

16A.10 National Industrial Participation Program

16A10.1 An accounting officer or accounting authority must obtain clearance for a recommended bidder from the Department of Trade and Industry, in respect of contracts which are subject to the National Industrial Participation Program of that Department.

16A.11 Reporting of supply chain management information

16A11.1 The accounting officer or accounting authority must submit to the relevant treasury such supply chain management information as that treasury may require.

16A11.2 A provincial treasury must submit to the National Treasury such supply chain management information as the National Treasury may require.

16A11.3 Information referred to in paragraphs 16A.10.1 and 16A10.2 must be submitted to the relevant treasury in such format and at such intervals as that treasury may require.

16A.12 Interim arrangements

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16A12.1 If a department lacks the capacity to fully comply with these regulations, that department may continue to make use of existing procurement processes through the relevant Tender Boards or other provincial procurement authorities (whichever applicable), subject to any instructions of the relevant treasury.

PART 7

Accounting and reporting requirements

17

Basic accounting records and related issues

17.1 Use of clearing and suspense accounts [Section 40(1)(a) of the PFMA]

- 17.1.1 All the transactions of an institution must be supported by authentic and verifiable source documents, clearly indicating the approved accounting allocation.
- 17.1.2 Should it be necessary, in exceptional cases, to account for revenue and expenditure transactions in a clearing or suspense account because the classification has not been resolved, the accounting officer must ensure that –
 - (a) the sources of the transactions are readily identifiable;
 - (b) amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
 - (c) monthly reconciliation's are performed to confirm the balance of each account; and
 - (d) reports are provided to the accounting officer about uncleared items on a monthly basis.
- 17.1.3 In each month's section 40(4) report, the accounting officer must certify that the forecast/projection for the remainder of the financial year adequately makes provision for all amounts not yet cleared from clearing and suspense accounts.

17.2 Availability of financial information [Section 40(1)(a) of the PFMA]

- 17.2.1 Accounting officers of institutions must, subject to the provisions of the relevant national or provincial legislation, retain all financial information in its original form, as follows –
 - (a) information relating to one financial year – for one year after the audit report for the financial year in question has been tabled in Parliament or the provincial legislature; or
 - (b) information relating to more than one financial year – for one year after the date of the audit report for the last of the financial years to which the information relates.
- 17.2.2 After the expiry of the above retention periods, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and ensures that the information can be reproduced, if necessary, as permissible evidence in a court of law.
- 17.2.3 Irrespective of paragraph 17.2.1, the following standards apply to the retention of certain types of record –

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Type of record	Years after which records can be disposed of
General ledger and cash books or similar records	15
Main transaction summary records, including general journals and transaction summaries	10
Internal audit reports	
System appraisals	
Primary evidentiary records, including copies of forms issued for value, vouchers to support payments made, pay sheets, returned warrant vouchers or cheques, invoices and similar records associated with the receipt or payment of money	5
Subsidiary ledgers, including inventory cards and records relating to assets no longer held or liabilities that have been discharged	
Supplementary accounting records, including, for example, cash register strips, bank statements and time sheets	5
General and incidental source documents not included above, including stock issue and receivable notes, copies of official orders (other than copies for substantiating payments or for unperformed contracts), bank deposit books and post registers	5

- 17.2.4 When financial information is required as evidence in proceedings before a court, Parliament, a provincial legislature, an official inquiry or otherwise, or for purposes of an audit, it must be secured in its then current form until no longer required, even if the National Archivist has authorised its disposal.

17.3 Changes to financial systems

- 17.3.1 Institutions may not amend existing or institute new computerised systems that will affect financial administration without the prior written approval of the National Treasury.

18

Monthly and annual reports

18.1 Monthly reports [Sections 32(2) and 40(4)(b) and (c) of the PFMA]

- 18.1.1 In addition to the reporting requirements of sections 40(4)(b) and (c) of the Act, the accounting officer must also comply with the reporting requirements of the annual Division of Revenue Act.
- 18.1.2 A provincial treasury must submit a statement to the National Treasury on actual revenue and expenditure with regard to its revenue fund before the 22nd day of each month in the format determined by the National Treasury. Such a statement must include a certificate to the effect that the information supplied has been verified by the head official of the provincial treasury. The information supplied must be based on information submitted to the provincial treasury by provincial accounting officers in terms of section 40(4)(c) of the Act.

18.2 Annual financial statements [Section 40(1)(b) of the PFMA]

[For the financial year ending 31 March 2003, the] The following reporting standards comprise generally recognised accounting practice and must be adhered to for the preparation of annual financial statements, unless otherwise approved by the National Treasury:

Reporting entity	Generally recognised accounting practice
National and provincial revenue funds	<p>Annual financial statements must consist of –</p> <ul style="list-style-type: none"> (a) a statement of liabilities and financially related assets; (b) <u>an income statement</u> (statement of financial performance); (c) a cash flow statement; (d) notes to the annual financial statements; (e) a report on the financial position of and performance by the Treasury; and (f) such other statements as may be determined by the [Accounting Standards Board] <u>National Treasury</u>. <p>The annual financial statements must be prepared on a modified cash basis in accordance with the formats prescribed by the National Treasury and must be accompanied by the audit opinion of the Auditor-General.</p> <p>The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the relevant revenue fund.</p>
Departments	<p>Annual financial statements must consist of –</p> <ul style="list-style-type: none"> (a) a <u>balance sheet</u> (statement of financial position); (b) a statement of changes in [equity] <u>net assets</u>; (c) <u>an income statement</u> (a statement of financial performance) ; (d) a cash flow statement; (e) [notes to the annual financial statements] <u>an appropriation</u> statement; [and] (f) [such other statements as may be determined by the Accounting Standards Board] <u>notes to the appropriation statement and annual financial statements; and</u> (g) <u>such other statements as may be determined by the National Treasury.</u>

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	<p>The statements must be prepared on a modified cash basis in accordance with the formats prescribed by the National Treasury and must be accompanied by the audit opinion of the Auditor-General.</p> <p>The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the [institution] department.</p>
<p>Trading entities</p> <p>Constitutional institutions</p>	<p>Annual financial statements must consist of –</p> <p>(a) a <u>balance sheet</u> (statement of financial position);</p> <p>(b) an <u>income statement</u> (statement of financial performance);</p> <p>(c) a cash flow statement;</p> <p>(d) notes to the annual financial statements; and</p> <p>(e) such other statements as may be determined by the [Accounting Standards Board] National Treasury.</p> <p>The annual financial statements must be accompanied by the audit opinion of the Auditor-General.</p> <p>The annual financial statements must conform with <i>generally accepted accounting practice</i>. These statements must fairly represent the financial position at the end of the financial year concerned and cash flows of the institution for the year then ended.</p> <p>Should these statements materially depart from the Statements of GAAP, the financial statements must provide a disclosure of the departure, the particulars thereof, the reasons therefore and the <u>financial</u> effect of such a departure on the financial statements.</p> <p>The annual financial statements must, by means of figures and a descriptive report, explain any other matters and information material to the affairs of the institution.</p>

18.3 Contents of annual reports [for the financial year ending 31 March 2003] [Section 40(1)(d) of the PFMA]

18.3.1 In preparing the annual report of an institution, the accounting officer must –

- (a) in the case of a department or trading entity, comply with the requirements prescribed in Chapter 1, Part III J of the *Public Service Regulations*, [2001] 2003;
- (b) include information about the institution's efficiency, economy and effectiveness in delivering programmes and achieving its measurable objectives and outcomes against the measures and indicators set out in any strategic plan for the year under consideration;
- (c) include information on transfers and subsidies [payments] per organisation for the entire financial year as well as a report on compliance with section 38(1)(j) of the Act;
- (d) include all information required in terms of the annual Division of Revenue Act;
- (e) include any additional information required by Parliament or the provincial legislature;
- (f) report on the use of foreign aid assistance, detailing the source and intended use of the assistance (including the value of any aid-in-kind in rand), performance information on the institution's use of the assistance, and any pending applications for assistance;
- (g) a report from the audit committee as required by paragraph 3.1.13; and
- (h) include information on the management of PPP agreements as required by paragraph [16.8.1(e)] 16.7.1(f).

*Part 7: Accounting and reporting requirements***18.4 Additional annual reporting requirements for departments controlling trading entities, and public entities**

- 18.4.1 A department's annual report must include a list of trading and/or public entities; controlled by or reporting to the department or responsible executive authority, together with –
- (a) an indication of the legislation under which the trading and/or public entity was established;
 - (b) a statement of the functions of each trading and/or public entity; and
 - (c) the accountability arrangements established between the accounting officer or executive authority and the management of the trading and/or public entity.

PART 8

Miscellaneous

19

Trading entities

19.1 Definitions [Section 76(4)(b) of the PFMA]

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“head of the trading entity” refers to either –

- (a) the accounting officer appointed in terms of section 36(3)(b) of the Act; or
- (b) an official assigned to head the trading entity in terms of section 44(1)(a) of the Act.

19.2 General

- 19.2.1 For purposes of this regulation, a trading entity is regarded as an entity operating within the administration of a department. All obligations on departments in these regulations apply to trading entities, unless the context indicates otherwise.
- 19.2.2 The accounting officer of the department operating a trading entity must ensure that the head of the trading entity complies with the Act and these *Treasury Regulations*.
- 19.2.3 Trading entities allowed to open bank accounts may not borrow for bridging purposes and may not run overdrafts on their banking accounts.

19.3 Policy and reporting framework

- 19.3.1 The accounting officer of a department operating a trading entity must formulate a policy and reporting framework for the head of the trading entity.
- 19.3.2 The head of the trading entity is accountable to the accounting officer of the department operating that trading entity and must forward all reports or approvals required in the Act via the accounting officer of the department.

19.4 Establishment

- 19.4.1 Provincial treasuries may only establish a trading entity after consultation with the National Treasury.

19.5 Capital requirements and user charges

- 19.5.1 The capital requirements of the trading entity must be determined in consultation with the relevant treasury, and increases in such requirements are also subject to treasury approval.
- 19.5.2 In determining charges for goods or services, the head of the trading entity must aim to recover the full cost of providing the goods or services, unless the relevant treasury approves lower charges.

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- 19.5.3 The head must review rates for user charges at least annually before the budget, and any tariff increases are subject to approval by the relevant treasury.

19.6 Disposal of assets

- 19.6.1 When assets are disposed of other than in the ordinary course of the business of the trading entity, the relevant treasury must approve the transaction.

19.7 Surrender of surplus funds

- 19.7.1 An accounting officer of a department operating a trading entity must, at the end of each financial year and after books of account have been closed, declare any surplus or deficit to the relevant treasury. The relevant treasury may apply such surplus to reduce any proposed allocation to the trading entity, or require that all or part of it be redeposited in the Exchequer bank account.
- 19.7.2 Where a trading entity suffers a deficit in trading, the accounting officer of the department operating the trading entity must investigate whether –
- (a) the head of the trading entity reported any foreseeable potential overexpenditure in the monthly reports;
 - (b) appropriate steps were taken to address the deficit; and
 - (c) financial misconduct sanctions should be instituted if paragraphs (a) and (b) were not adhered to.
- 19.7.3 In the event of a trading entity incurring a deficit, the accounting officer of the department controlling the trading entity must disclose the financial impact of such a deficit on the department in its annual report.

19.8 Monthly and annual reporting

- 19.8.1 The accounting officer of a department controlling a trading entity must provide the monthly information regarding the expenditure and revenue as required by section 40(4)(b) and (c) of the Act in respect of such a trading entity in the monthly report of the department
- 19.8.2 In the event of the accounting officer of the trading entity not being the accounting officer of the department, then such an accounting officer must provide the information required in Treasury Regulation 19.8.1 to the accounting officer of the department for inclusion in the department's monthly report.
- 19.8.3 The relevant treasury may direct that the annual report and financial statements of the trading entity be incorporated into those of the department responsible for that trading entity.
- 19.8.4 The annual financial statements in respect of a trading entity must be compiled in accordance with paragraph 18.2.

19.9 Closure of a trading entity

- 19.9.1 Upon closure of a trading entity, all assets of the trading entity shall be transferred to the controlling department and taken on record.

20

Commissions and Committees of Inquiry

20.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“commission” means a commission of inquiry appointed by the President or the Premier of a province to investigate a matter of public concern, and does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise.

“committee” means a committee of inquiry appointed by the executive authority and includes an interdepartmental committee of inquiry, but does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise.

“non-official member” means a person who is not an official member.

“official member” means a person as defined in section 8(1) of the Public Service Act, 1994 (Proclamation No. R.103 of 1994), a member of Parliament or a judge, as well as a person employed by a body that was established by an Act of Parliament and that receives its funds wholly, or in part, from the National Revenue Fund, where such a person represents the department or body where he or she is employed as a member of a commission or committee.

20.2 Remuneration of members

20.2.1 An official member may not receive additional remuneration. Subsistence and other allowances may be paid to the official member by the institution that employs the official member in accordance with his or her conditions of service.

20.2.2 A non-official member must be remunerated according to scales approved by the National Treasury.

20.2.3 Should the accounting officer deem it necessary, he or she can, in consultation with the executive authority, determine other remuneration, provided that -

- (a) the terms of reference are properly defined in terms of time and cost; and
- (b) if applicable, the remuneration is considered taking into account the tariffs as determined by the institute that regulates the profession that the non-official member belongs to.

20.2.4 The remuneration of all members of a commission or committee must be disclosed as notes to the financial statements of the institution.

20.3 Services rendered by members during private time

20.3.1 Should the chairperson request a non-official member of a commission or committee to render services in his or her private time, other than the normal preparations for

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meetings, the person may be paid an honorarium (within the budget), as determined by the accounting officer and the executive authority. In the case of official members, section 30 of the Public Service Act of 1994 must be complied with.

21

Gifts, donations and sponsorships

21.1 Granting of gifts, donations and sponsorships by the state [Section 76(1)(l) of the PFMA]

- 21.1.1 The accounting officer may approve gifts, donations and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill.

21.2 Acceptance of gifts, donations and sponsorships to the state

- 21.2.1 The accounting officer may approve the acceptance of any gift, donation or sponsorship to the state, whether such gifts, donations or sponsorships are in cash or kind.
- 21.2.2 All cash gifts, donations or sponsorships must be paid into the relevant revenue fund, except those donations received in terms of paragraph 21.2.5.
- 21.2.3 Where it is not apparent for what purpose a gift, donation or sponsorship should be applied, the relevant executive authority may decide how it must be utilised.
- 21.2.4 All gifts, donations or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution.
- 21.2.5 Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

21.3 Gifts or donations of immovable property by or to the state [Sections 76(1)(k) and (l) of the PFMA]

- 21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.
- 21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

21.4 Identity of donors and sponsors

- 21.4.1 When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the relevant treasury a certificate from both the Public Protector and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.

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- 21.4.2 The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

22

Payments and remissions as an act of grace

22.1 General [Section 76(1)(j) of the PFMA]

- 22.1.1 Where no legislative authority exists, the accounting officer may approve as an act of grace or favour –
 - (a) the remission of money due to a revenue fund; and
 - (b) payments from a vote.
- 22.1.2 Where such payments from a vote exceed R100 000, Parliament or provincial legislature approval must be sought by including the item separately in the appropriation bill.
- 22.1.3 Where there is doubt as to whether an amount may be written off in terms of clause 11.4 of these *Regulations*, or should be treated as a remission as an act of grace, the relevant treasury must make the decision.
- 22.1.4 All remissions or payments made as an act of grace during the financial year must be disclosed as a note to the annual financial statements of the institution.

23

Government payroll deductions

23.1 Definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“Accountant-General” means the officer of the National Treasury designated as the Accountant-General;

“basic salary” means the annual notch that an official is employed on divided by 12. It excludes additional remuneration from overtime or other allowances;

“benefit deduction” means a deduction on Persal against an official’s salary for a debt arising from employment benefits, including home owner’s allowances and the motor finance scheme for senior officials;

“collective agreement deduction” means a deduction on Persal against an official’s salary arising from a collective agreement between the state and a union registered with the Public Service Coordinating Bargaining Council or similar body, in accordance with applicable law;

“debt” means an amount of money owed and already payable by an official to any person and for the purposes of these regulations, includes insurance premiums deducted in terms of policies with long and short-term insurers;

“deduction code” means a code issued by the Accountant-General to enable a person to deduct money from an individual paid via the Persal system;

“Director-General” means the Director-General: National Treasury;

“discretionary deduction” means a deduction on Persal against an official’s salary, other than benefit, collective agreement, state or statutory deductions;

“official” means a person in the employ of a department or a person in the employ of a constitutional institution who receives his or her salary via Persal, but excludes persons employed in terms of section 1 of the Magistrates Act, 1993 (Act No. 90 of 1993) and section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);

“Persal” means the personnel salary system of national and provincial government, and includes the Persol system;

“person” depending on the context, includes reference to the state or any other legal entity;

“state deduction” means a deduction on Persal against an official’s salary for a debt to a department that is subject to section 34 of the Basic Conditions of Employment Act (Act 75 of 1997);

“statutory deduction” means a deduction on Persal against an official’s salary, which is required or permitted in terms of a law, court order or arbitration award.

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23.2 Persal deductions

- 23.2.1 No official or employee of an entity contracted to operate Persal may, whether for paying a debt or any other purpose, process a discretionary deduction except in accordance with the provisions of these regulations and the agreement as contemplated in paragraph 23.3.
- 23.2.2 **[Before a benefit, collective agreement, state or statutory deduction is processed on Persal, the accounting officer must certify that the deduction is due and that no portion of it is a discretionary deduction.]**The accounting officer must take appropriate steps to ensure that no unauthorised discretionary deductions are processed on the Persal system.
- 23.2.3 **[Where such certification is for]** In cases where an emoluments attachment order is issued against an official in terms of section 65J of the Magistrates' Court Act (Act 32 of 1944), the accounting officer must be satisfied that –
- (a) the documentation presented by the judgement creditor or his or her attorney *inter alia* reflects, as contemplated in this Act –
 - (i) that the official has given written consent to the issuing of the order or that a court has authorised it (on application or otherwise), and that this authorisation has not been suspended; or
 - (ii) that the official has first been sent a registered letter advising him or her of the amount of the judgement debt and costs, and warning that an emoluments attachment order will be issued if this amount is not paid within ten days of the date of its posting;
 - (b) after the deduction, the official will have sufficient means for maintenance for him or herself and any dependants.
- 23.2.4 Should the deduction not leave the official with sufficient means for maintenance or for that of his or her dependants, the accounting officer must advise the official of his or her right to approach the court to either rescind the order or amend it to affect only the balance of the salary after provision for such maintenance.

23.3 Deduction codes

- 23.3.1 Any person may apply for a deduction code for a discretionary deduction, subject to the requirements as laid down by the Accountant-General.
- 23.3.2 Only the Accountant-General may approve the issuing of deduction codes, in terms of an agreement between the Accountant-General and a person qualifying for such a code.
- 23.3.3 A person applying for a deduction code must certify in the application that –
- (a) the code is required by –
 - (i) a department;
 - (ii) an insurance company (for insurance deduction codes) approved by the Financial Services Board;
 - (iii) a company (for loan deduction codes) that is registered under the Banks Act (Act 94 of 1990) or with the Micro Finance Regulatory Council (MFRC);
 - (iv) a public higher education institution; or
 - (v) a private higher education institution approved by the national Department of Education.
 - (b) third parties, including brokers, will not be allowed access to the code;
 - (c) the person consents to –
 - (i) entering into an agreement with the Accountant-General, which is subject to annual review;

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- (ii) the oversight of the Financial Services Board and the National Treasury to monitor compliance with the agreement and this regulation; and
 - (iii) an audit, at own expense, by parties determined by the Accountant-General;
- (d) the person is in good standing with the South African Revenue Services and will annually provide the Accountant-General with proof of such good standing.
- 23.3.4 The Accountant-General may levy a fee of up to 5 per cent of deductions for emolument attachment orders, except orders specifically for child maintenance.
- 23.3.5 The National Treasury may, for a discretionary loan deduction, determine the maximum loan period, the maximum loan amount and the interest rate (this will form part of the agreement with the Accountant-General) –
 - (a) for loans over R10 000, the Usury Act limit is the maximum, all inclusive interest rate;
 - (b) for loans below R10 000, the maximum is 27 per cent plus an administrative cost subject to a limit set out in the agreement with the Accountant-General.
- 23.3.6 Discretionary deductions may not exceed 40 per cent of the official's basic salary, provided that –
 - (a) deductions for insurance premiums do not exceed 15 per cent;
 - (b) other discretionary deductions do not exceed 25 per cent; and
 - (c) the minimum take-home pay is as specified in the agreement with the Accountant-General.
- 23.3.7 Notwithstanding the provisions of paragraph 23.3.6, discretionary deductions in excess of the limits prescribed by that paragraph may be deducted; provided that the Accountant-General is satisfied that not allowing such deductions will substantially prejudice the interests of the employee and that such deductions shall be limited in duration to a period as determined by the Accountant-General.
- 23.3.8 The Minister of Finance may determine the future of the discretionary deductions system and the number of deduction codes on the Persal system.
- 23.3.9 Insurance companies to whom deduction codes are allocated may vary premiums periodically, provided that the annual increase does not exceed 15 per cent of the premium or ten rand (R10), whichever is greater.

23.4 Contravention of regulations and penalties

- 23.4.1 Any serious or persistent material non-compliance with this regulation or the terms of the agreement with the Accountant-General constitutes misconduct.
- 23.4.2 It is a serious contravention for any person to knowingly exceed the deduction limits described above.
- 23.4.3 The Accountant-General may penalise a person for contravening this regulation by–
 - (a) withdrawing or suspending the use of a deduction code;
 - (b) refusing access to the Persal system for a specific period;
 - (c) publishing the identity of the person and the details of the contravention;
 - (d) laying criminal charges; and
 - (e) if the person is an official, direct that the contravention be dealt with in terms of the Act.
- 23.4.4 Any person aggrieved by a decision of or penalty imposed by the Accountant-General may appeal to the Minister of Finance, whose decision will be final.

23.5 Transitional arrangements

- 23.5.1 As from 31 May 2002, all deductions that do not comply with these regulations will be terminated, in the following order --
- (a) deductions to parties that do not have access to Persal codes;
 - (b) loan deductions that do not meet the interest rate and pricing limits set out in this regulation;
 - (c) deductions where payments in a specific category exceed the limits outlined above; and
 - (d) a "last in-first out" basis will be used, unless determined otherwise by the Accountant-General.

PART 9

Public entities

24

General definitions

24.1 General definitions

In this regulation, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and -

“designated accounting officer” means the accounting officer of a designated department;

“designated department”, in relation to a public entity, means a department designated by its executive authority as the department responsible for the public entity;

“employee” means a person in the employ of a public entity;

“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;

“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.

“remuneration” means any consideration or benefit derived directly or indirectly by members of the accounting authority, the chief executive officer or the person in charge of the public entity, the chief financial officer, persons serving on the senior management of the public entity or the entity under the public entity’s ownership control for services provided in their capacity as members of the accounting authority, as the chief executive officer or the person in charge of the public entity, as the chief financial officer, as a person serving on the senior management of the public entity or as a member or person serving in other entities under the ownership control of the public entity.

25

Application and listing

25.1 Application [Sections 47 and 76(4) of the PFMA]

- 25.1.1 These regulations apply to all public entities listed in Schedule 2 or 3 of the Act, unless the context indicates otherwise.
- 25.1.2 Public entities that should have been listed in terms of the Act but which are not listed, must deposit all money received into the relevant revenue fund.
- 25.1.3 Public entities must submit all information required by the National Treasury in terms of the Act and these regulations to the Registrar of Public Entities in the National Treasury.

25.2 Listing [Section 47(2) of the PFMA]

- 25.2.1 An accounting authority of a public entity not listed in terms of the Act must submit the following information to the executive authority and the Registrar of Public Entities in support of its application for listing –
 - (a) name of the public entity;
 - (b) its main function;
 - (c) executive authority responsible for the public entity;
 - (d) legislation in terms of which the entity was established;
 - (e) dates of its incorporation and financial year end;
 - (f) names of members of the board or body controlling the public entity;
 - (g) its registered address and telephone numbers;
 - (h) name of the chief executive officer;
 - (i) name of the chief financial officer;
 - (j) name of the company secretary;
 - (k) authority responsible for appointing the chief executive officer;
 - (l) authority responsible for appointing the board of directors or controlling body;
 - (m) subsidiaries under the ownership control of the entity;
 - (n) latest audit financial statements;
 - (o) amount of budgetary transfers received over the past three financial years; and
 - (p) most recent corporate/strategic plan of the public entity.

26

Responsibilities of designated accounting officers

26.1 Responsibilities over Schedule 3A and 3C public entities

- 26.1.1 The designated accounting officer must ensure that within thirty days of the end of each quarter, the public entity submits information on its actual revenue and expenditure up to the end of that quarter as well as a projection of expected expenditure and revenue for the remainder of the current financial year. The information on actual revenue and expenditure shall be determined after taking accruals in account.
- 26.1.2 The accounting authority must quarterly report to the executive authority through the designated accounting officer on the extent of compliance on the Public Finance Management Act, 1999 and regulations. Any non-compliance must be reported together with reasons for the non-compliance.
- 26.1.3 The designated accounting officer may, after consultation with the relevant public entity, approve the sharing of services where it is economical, including the services of the audit committee and internal audit function.

27

Internal control and corporate management

27.1 Audit committees [Sections 51(1)(a)(ii) and 76(4)(d) of the PFMA]

- 27.1.1 The accounting authority of a public entity must establish an audit committee as a sub-committee of the accounting authority.
- 27.1.2 A shared audit committee may be established for a public entity and any subsidiaries under the ownership and control of that entity.
- 27.1.3 The chairperson of the 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 the chairperson of the accounting authority or a person who fulfils an executive function in the public entity.
- 27.1.4 The majority of the members of an audit committee shall consist of non-executive members appointed by the accounting authority, although committee members need not all be members of the accounting authority. The majority of persons serving on an audit committee must be financially literate.
- 27.1.5 The relevant executive authority must concur with any premature termination of services of a member of the audit committee.
- 27.1.6 The 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.
- 27.1.7 It must be disclosed in the entity'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.
- 27.1.8 The audit committee must, amongst others, review the following:
 - (a) the effectiveness of the internal control systems;
 - (b) the effectiveness of internal audit;
 - (c) the risk areas of the entity's operations to be covered in the scope of internal and external audits;
 - (d) the adequacy, reliability and accuracy of 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 entity'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; and
 - (h) where relevant, the independence and objectivity of the external auditors.

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- 27.1.9 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 information supplied to it within the ambit of the law.
- 27.1.10 The audit committee must –
- (a) report and make recommendations to the accounting authority;
 - (b) report on the effectiveness of internal controls in the annual report of the institution; and
 - (c) comment on its evaluation of the financial statements in the annual report.
- 27.1.11 Should a report from internal audit (or any other source) to the audit committee implicate any member(s) of the accounting authority in fraud, corruption or gross negligence, the chairperson of the audit committee must promptly report this to the relevant executive authority and the Auditor-General.
- 27.1.12 The audit committee must communicate any concerns it deems necessary to the executive authority, the Auditor-General and if appropriate, to the external auditor.
- 27.1.13 The audit committee must meet at least annually with the Auditor-General or the external auditor, whichever applicable, to ensure that there are no unresolved issues of concern.

27.2 Internal controls and internal audit [Sections 51(1)(a)(ii) and 76(4)(b) and (e) of the PFMA]

- 27.2.1 The accounting authority must ensure that a risk assessment is conducted regularly so as to identify emerging risks of the public entity. 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 employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity.
- 27.2.2 All public entities to which these regulations apply must have an internal audit function.
- 27.2.3 A public entity and subsidiaries under the ownership control of the entity may have a shared internal audit function.
- 27.2.4 The internal audit function may, in accordance with preferred tendering procedures, be contracted out to an external institution with specialist audit expertise, provided that the external auditors may not perform the internal audit function.
- 27.2.5 The purpose, authority and responsibility of the internal audit function must, in consultation with the Board, be formally defined in an audit charter and be consistent with the Institute of Internal Auditors (“IIA”) definition of internal auditing.
- 27.2.6 Internal audit must be conducted in accordance with the standards set by the Institute of Internal Auditors.
- 27.2.7 The internal audit function must, in consultation with the audit committee, prepare:
- (a) a rolling three-year strategic internal audit plan based on its assessment of key areas of risk for the public entity, having regard to its current operations, the operations proposed in its corporate or strategic plan and its risk management strategy;
 - (b) an internal audit plan for the first year of the rolling plan;
 - (c) plans indicating the scope of each audit in the annual internal audit plan; and

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- (d) reports to the audit committee detailing its performance against the plan, to allow effective monitoring and intervention when necessary.
- 27.2.8 The internal audit function must report directly to the accounting authority 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.
- 27.2.9 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.
- 27.2.10 The internal audit function must assist the accounting authority in maintaining 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.
- 27.2.11 The internal audit function must assist the accounting authority 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.

27.3 Chief financial officers

- 27.3.1 Unless directed otherwise by the relevant treasury, each public entity listed in Schedule 3A or 3C of the Act shall have a chief financial officer as the head of the finance division.
- 27.3.2 Without limiting the right of the accounting authority to assign specific financial management responsibilities, the general responsibility of the chief financial officer is to assist the accounting authority in discharging the duties prescribed in Part 2 of Chapter 6 of the Act.

28

Annual financial statements and annual reports

28.1 Financial statements [Section 55 of the PFMA]

[28.1.1 The annual financial statements must, include a report by the accounting authority which must also include a disclosure of emoluments of all directors and executive members of the holding entity and its subsidiaries. Emoluments paid or receivable by directors and executive members shall be disclosed in aggregate and per director and executive member in respect of the last financial period. Such disclosure is required whether such payment is receivable in the director's or executive member's capacity as director or executive member or in any other capacity. Disclosure in respect of executive directors, non-executive directors and executive members must be made separately.]

28.1.1 The annual financial statements must include a report by the accounting authority which must include the disclosure of remuneration in respect of all:

- (a) members of the accounting authority;
- (b) the chief executive officer or the person in charge of the public entity;
- (c) the chief financial officer;
- (d) persons serving on the public entity's senior management; and
- (e) members or persons in (a) to (d) above serving in other entities under the ownership control of the public entity.

28.1.2 Remuneration paid or receivable by the members or persons in paragraph 28.1.1 (a) to (e) shall be disclosed in aggregate and per member or person for the last financial period.

28.1.3 Disclosures in terms of paragraphs 28.1.1 and 28.1.2 is required whether such payment is receivable in the capacity as indicated in paragraph 28.1.1 (a) to (d) or in any other capacity.

28.1.[2]4 The disclosure requirements in [Treasury Regulation 28.1.1] paragraphs 28.1.1 to 28.1.3 shall include:

- (a) fees for services as a [director or executive member] member or person in paragraph 28.1.1 (a) to (d);
- (b) basic salary;
- (c) bonuses and performance related payments;
- (d) sums paid by way of expense allowances;
- (e) contributions made to any pension fund, medical aid, insurance scheme, etc;
- (f) any commission, gain or profit sharing arrangements;
- (g) any share options, including their strike price and period; and
- (h) any other material benefits received.

*Treasury Regulations: PFMA***[28.1.3 Public entities listed in Schedule 3A or 3C of the Act must adjust their financial years in accordance with the following table:**

Existing year end	New year end	Period of financial statements and audit
30 September 2001	31 March 2003	18 months
31 October 2001	31 March 2003	17 months
30 November 2001	31 March 2003	16 months
31 December 2001	31 March 2003	15 months
31 January 2002	31 March 2003	14 months
28 February 2002	31 March 2003	13 months]

28.1.[4]5 Public entities listed in Schedule 3A or 3C of the Act may, after consultation with the designated accounting officer, submit their annual financial statements and any other information required in terms of the Act to the designated accounting officer for inclusion in the relevant department's annual report.

28.1.[5]6 For purposes of material [sections 50(1) and 55(2) [and 66(1)] of the Act] and significant [section 54(2) of the Act], the accounting authority must develop [and agree] a framework of acceptable levels of materiality and significance with the relevant executive authority in consultation with the external auditors.

28.1.[6]7 In terms of section 55(1)(b) of the Act, public entities shall prepare financial statements in accordance with generally accepted accounting practice. Should these the financial statements materially depart from the Statements of GAAP, the financial statements must provide a disclosure of the departure, the particulars thereof, the reasons therefore and the financial effect of such a departure on the financial statements.

28.2 Annual reports [Section 55(1)(d)(i) of the PFMA]

28.2.1 The annual report of public entities shall detail the materiality/significant framework applied during the financial year.

28.2.2 Any material losses through criminal conduct and any irregular and fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the public entity.

28.2.3 Particulars of the public entity's strategic objectives and outcomes as identified and agreed on by the executive authority, the key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives and the entity's actual performance against the strategic objectives and outcomes, must be disclosed in the annual report of the public entity.

29

Corporate planning, shareholder's compacts and annual budgets

29.1 Corporate plans [Section 52 of the PFMA]

- 29.1.1 The corporate plan must cover a period of three years and must include –
- (a) strategic objectives and outcomes identified and agreed on by the executive authority in the shareholder's compact;
 - (b) strategic and business initiatives as embodied in business function strategies;
 - (c) key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives;
 - (d) a risk management plan;
 - (e) a fraud prevention plan;
 - (f) a materiality/significant framework, referred to in Treasury Regulation [28.1.5] 28.1.6 ,
 - (g) a financial plan addressing –
 - (i) projections of revenue, expenditure and borrowings;
 - (ii) asset and liability management;
 - (iii) cash flow projections;
 - (iv) capital expenditure programmes; and
 - (v) dividend policies.
- 29.1.2 The executive authority of a public entity may request additional information to be included in the corporate plan.
- 29.1.3 Public entities listed in Schedule 2 or 3B must:
- (a) submit a three-year borrowing programme (beginning with the first financial year of the corporate plan) with their corporate plan to the National Treasury; and
 - (b) submit quarterly reports on the borrowing programme to the National Treasury, reflecting actual borrowing for that quarter and any update of the borrowing programme.
- 29.1.4 Provincial government business enterprises listed in Schedule 3D and authorised to borrow by the Minister of Finance must –
- (a) submit to the relevant treasury, with their corporate plans, a three-year borrowing programme beginning with the first financial year of the corporate plan. The programme must be in terms of approvals and limits determined by the Minister, and in terms of the Borrowing Powers of Provincial Governments Act; and
 - (b) submit to the relevant treasury, quarterly reports on the approved borrowing programme, reflecting actual borrowing for that quarter and any update of the borrowing programme.
- 29.1.5 The relevant treasury must forward to the National Treasury –
- (a) a copy of the corporate plan and approved borrowing plan;
 - (b) quarterly updates reflecting actual borrowing for that quarter; and

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- (c) any update in the borrowing programme of Schedule 3D provincial government business enterprises that are authorised to borrow.

29.1.6 The borrowing programme referred to in paragraphs 29.1.3 and 29.1.4 must include –

- (a) the terms and conditions on which the money is borrowed;
- (b) information on proposed domestic borrowing;
- (c) for national public entities, information on proposed foreign borrowing within the prescribed limit, where applicable;
- (d) short and long-term borrowing;
- (e) borrowing in relation to a pre-approved corporate plan;
- (f) the maturity profile of the debt;
- (g) the confirmation of compliance with existing and proposed loan covenants;
- (h) debts guaranteed by the government;
- (i) motivations for government guarantees, if required, and
- (j) the executive authority's approval of the borrowing programme, if required by the legislation in terms of which the public entity was established.

29.2 Shareholder's compact

29.2.1 The accounting authority for a public entity listed in Schedule 2, 3B or 3D must, in consultation with its executive authority, annually conclude a shareholder's compact.

29.2.2 The shareholder's compact must document the mandated key performance measures and indicators to be attained by the public entity as agreed between the accounting authority and the executive authority.

29.2.3 The executive authority for a public entity listed in schedule 2, 3B or 3D must provide the Registrar of Public Entities, situated within the National Treasury, with a copy of the entity's shareholder's compact.

29.3 Evaluation of performance

29.3.1 The accounting authority of a public entity must establish procedures for reporting quarterly [reporting] against its corporate 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.

29.4 Annual budgets [Section 52(a) of the PFMA]

29.4.1 For purposes of section 52(a) of the Act, the projection of revenue, expenditure and borrowings must be in the same format as submitted for the accounting authority's approval.

30

Strategic planning

30.1 Strategic plan

- 30.1.1 The accounting authority for a public entity listed in Schedule 3A or 3C must annually submit a proposed strategic plan for approval by the relevant executive authority. Such a plan must be submitted at least six months before the start of the financial year of the designated department or another time period as agreed to between the executive authority and the public entity.
- 30.1.2 The strategic plan must be finalised and submitted to the relevant executive authority no later than 1 April of each year.
- 30.1.3 The strategic plan must –
- (a) cover a period of three years;
 - (b) include objectives and outcomes as identified by the executive authority;
 - (c) include multi-year projections of revenue and expenditure;
 - (d) include key performance measures and indicators for assessing the public entity's performance in delivering the desired outcomes and objectives;
 - (e) include the materiality/significant framework, referred to Treasury Regulation [28.1.5] 28.1.6;
 - (f) be updated annually on a rolling basis; and
 - (g) form the basis for the annual reports of accounting authorities in terms of section 55 of the Act.
- 30.1.4 The executive authority may request additional information to be included in the strategic plan.

30.2 Evaluation of performance

- 30.2.1 The accounting authority of a public entity 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.

31

Cash, banking and investment management

31.1 Cash management [Section 7(1) of the PFMA]

31.1.1 The accounting authority of a public entity listed in Schedule 3 is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

31.1.2 For the purposes of this regulation, sound cash management includes:

- (a) collecting revenue when it is due and banking it promptly;
- (b) making payments no earlier than necessary, with due regard for efficient, effective and economical programme delivery and the public entity's normal terms of account payments;
- (c) avoiding pre-payments for goods or services (i.e. payment in advance of the receipt of goods or services, unless required by the contractual arrangements with the supplier);
- (d) accepting discounts to effect early settlement when the payment has been included in the monthly cash flow estimates provided to the chief financial officer;
- (e) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the public entity are collected and banked promptly;
- (f) accurately forecasting the public entity's cash flow in order to optimise its central cash management responsibilities;
- (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 optimum level necessary for efficient and effective programme delivery, and selling surplus or under utilised assets;
- (j) conducting bank reconciliations at least weekly;
- (k) making regular cash forecasts;
- (l) alignment of the approved budget with monthly cash flows;
- (m) variance analyses of actual cash flow with the approved budget; and
- (n) sweeping bank accounts to effectively utilise surplus cash.

31.1.3 The accounting authority must ensure that the public entity's cash management performance is reported regularly, but at least on a monthly basis.

31.2 Banking framework [Sections 7(2) and (3) of the PFMA]

31.2.1 When a public entity listed in Schedule 3 of the Act intends to open a new bank account, the National Treasury must approve of the bank. **[For purposes of section 7(2)(a) of the Act, existing banking arrangements can be regarded as approved by the National Treasury, but the accounting authority must, by 31 May of each year, submit to the National Treasury, a list of all such banking accounts of the public entity.]**

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- 31.2.2 When going to tender, and if the National Treasury has not proposed a bank, the public entity must take into account –
- (a) that the bank is registered with the South African Registrar of Banks;
 - (b) that the bank is a member or sponsored by a member of the Payments Association of South Africa;
 - (c) the bank's contracting with persons, or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
 - (d) the cost effectiveness; and
 - (e) the ability of the bank to provide the required services which through adequate systems, infrastructure and branch networks.
- 31.2.3 The adjudication and awarding of tenders must be done in accordance with the public entity's own internal tendering procedures.
- 31.2.4 A public entity must review its banking account arrangements once every five years.
- 31.2.5 Before appointing any bank for the provision of a service, the public entity must submit a notice of its intention for such services to all clearing banks, inviting them to submit a bid 30 after the gazetting of such notice.
- 31.2.6 Where a bank submits an unsolicited bid, or where a public entity wants to change its bank account, it must do so in terms of paragraph 31.2.5 after an open bid process where all clearing banks are informed of its intention. The National Treasury, the relevant treasury (in the case of provincial public entities) and the Auditor-General shall be informed of all unsolicited bids.
- 31.2.[4] Only the accounting authority or the person to whom such authorisation has been delegated may open a bank account.

31.3 Investment policy [Sections 7(4) and 53(3) of the PFMA]

- 31.3.1 **[A public entity or a government business enterprise]** All public entities with funds under management must have an investment policy approved by the accounting authority.
- 31.3.2 The investment policy referred to in paragraph 31.3.1 must include –
- (a) selection of counter-parties through credit risk analyses;
 - (b) establishment of investment limits per institution;
 - (c) establishment of investment limits per investment instrument;
 - (d) monitoring of investments against limits;
 - (e) reassessment of investment policies on a regular basis;
 - (f) reassessment of counter-party credit risk based on credit ratings; and
 - (g) assessment of investment instruments based on liquidity requirements.
- [31.3.3 Unless exempted by the National Treasury, public entities that are listed in Schedule 3A or 3C of the Act must invest surplus funds with the Corporation for Public Deposits.
- 31.3.4 For purposes of paragraph 31.3.3, surplus funds refer to all money in excess of a given day's projected cash flow requirements plus a liquidity buffer needed to cover unforeseen expenditure on that day.
- 31.3.5 Public entities exempted by the National Treasury in terms of paragraph 31.3.3 must invest surplus funds in an institution with an investment grade rating and in line with an investment policy.]

*Treasury Regulations: PFMA***31.3 Disclosure of information**

- 31.4.1 A public entity listed in Schedule 3 of the Act must promptly disclose information regarding cash, banking and investment management when so requested by the National Treasury.

32

Borrowings and leases

32.1 Borrowing [Section 66 of the PFMA]

32.1.1 For purposes of section 66(5) of the Act, public entities listed in Schedule 3A or 3D of the Act may borrow money for bridging purposes with the approval of the Minister of Finance, subject to the following conditions:

- (a) the debt must be repaid within 30 days of the end of the financial year;
- (b) borrowing may not exceed a limit determined in advance by the Minister of Finance, in consultation with the national executive authority or provincial MEC for finance, whichever appropriate;
- (c) foreign borrowing may not be undertaken;
- (d) a request for borrowing for bridging purposes must be submitted to the Minister of Finance at least 30 days before the borrowing. The following must be submitted together with the request –
 - (i) detailed cash flow and income and expenditure statements indicating how the debt will be repaid during the prescribed period; and
 - (ii) the terms and conditions on which the money is borrowed.

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

32.2 Leases

32.2.1 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).

32.2.2 The accounting authority of a public entity may, for the purpose of conducting the public entity's business, enter into operating lease transactions without any limitations.

32.2.3 Public entities listed in Schedules 2, 3A, 3B and 3D of the Act may, only through the following functionaries, enter into finance lease transactions:

- (a) A public entity listed in Schedule 2: the accounting authority for that Schedule 2 public entity;
- (b) A national public entity listed in Schedule 3A: the Minister of Finance;
- (c) A national government business enterprise listed in Schedule 3B and authorised by the Minister by notice in the national Government Gazette: the accounting authority of that Schedule 3B government business enterprise, subject to conditions that the Minister may impose; and
- (d) A provincial business enterprise listed in Schedule 3D and authorised by the Minister by notice in the national Government Gazette: the MEC for finance in the province, acting with the concurrence of the Minister, subject to any conditions that the Minister may impose.

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32.2.4 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 public entity can use the asset without major modifications being made;
- [(f) the lessor's losses associated with the 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.

32.2.5 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.

32.2.6 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 32.2.4 and 32.2.5.

33

Financial misconduct

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

- 33.1.1 If an employee is alleged to have committed financial misconduct, the accounting authority of the public entity 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.
- 33.1.2 The accounting authority must ensure that the investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.
- 33.1.3 If an accounting authority or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately.
- 33.1.4 The relevant treasury may, after consultation with the executive authority, –
 - (a) direct that a person other than an employee of the public entity conducts the investigation;
 - (b) issue any reasonable requirement regarding the way in which the investigation should be performed.

33.2 Criminal proceedings [Section 86 of the PFMA]

- 33.2.1 The accounting authority must advise the Auditor-General and the relevant executive authority and treasury of any criminal charges it has laid against any person in terms of section 86 of the Act.
- 33.2.2 The executive authority or relevant treasury may direct a public entity to lay charges of criminal financial misconduct against any person should an accounting authority fail to take appropriate action.

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

- 33.3.1 The accounting authority must, on an annual basis, submit to the executive authority, the relevant treasury and Auditor-General a schedule of –
 - (a) the outcome of any disciplinary hearings and/or criminal charges;
 - (b) the names and ranks of employees involved; and
 - (c) the sanctions and any further actions taken against these employees.