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KWAZULU-NATAL PROVINSIE
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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 152 OF 2016**DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS****NOTICE IN TERMS OF SECTION 14(5) OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998: TRANSITIONAL MEASURES RELATING TO THE DISTRIBUTION OF ASSETS, LIABILITIES, RESERVES AND EMPLOYEES IN MUNICIPALITIES AFFECTED BY THE RE-DETERMINATION OF BOUNDARIES IN TERMS OF SECTION 21 OF THE LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, 1998**

I, Nomusa Dube-Ncube, Member of the KwaZulu-Natal Executive Council responsible for local government, under the powers vested in me by sections 14(5) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and having consulted the affected municipalities in the Province, hereby provide for the transitional measures contained in the Schedule hereto.

Given under my Hand at Durban on this **29th** day of **July**, Two Thousand and Sixteen

_____ [Signed] _____

MRS. N DUBE-NCUBE, MPL

Member of the Executive Council of the Province of KwaZulu-Natal
responsible for local government

SCHEDULE**Preamble**

1.(a) As a result of the re-determination of boundaries in terms of section 21 of the Demarcation Act, certain municipalities will be disestablished and their former areas of jurisdiction will be merged into new municipalities or incorporated into the areas of jurisdiction of one or more existing municipalities.

(b) In order to give effect to these re-determinations, and to assist the affected municipalities, it is necessary to provide for transitional measures for the distribution of assets, liabilities, reserves, and employees.

(c) Given that the splitting municipalities will cease to exist and more than one municipality will be receiving portions of such municipalities, it is important that this Notice be issued to guide the process both prior and after the effective date, and to regulate the said process.

Definitions

2. In this Schedule a word or expression to which a meaning has been assigned in the Structures Act has the same meaning, and unless the context indicates otherwise—

“accounts payable” means accounts payable as defined in accordance with the accounting policy or accounting standards that the affected municipality is required by legislation to apply in preparing annual financial statements, that are owed by that splitting municipality or the affected district municipality;

“accounts payable attributable to assets” means accounts payable that are due by the splitting municipality or affected district municipality, due to purchases of capital assets or other amounts due as a result of upkeep or maintenance of capital assets under the control of a splitting municipality or affected district municipality;

“accounts payable attributable to specific service or service” means accounts payable that are due by the splitting municipality or affected district municipality due to outstanding service charges, fees, interest, penalties or any other amounts due as a result of up keep or maintenance of capital assets under the control of a splitting municipality or affected district municipality;

“accumulated surplus” means accumulated surplus reserves, as defined in accordance with the accounting standards that the splitting municipality or affected district municipality is required by legislation to apply in preparing annual financial statements, which are owed by that splitting municipality or the affected district municipality;

“affected district municipality” means the uThungulu District Municipality insofar as it relates to the splitting of the Ntambanana Municipality, and the Ugu District Municipality insofar as it relates to the splitting of the Vulamehlo Municipality;

“affected functions” means water services and related functions of an affected district municipality;

“affected municipalities” means the split municipality and the receiving municipality;

“assets” means assets as defined in the accounting standards that the splitting municipality and the affected district municipality are by legislation required to apply in preparing annual financial statements, that are owned by that splitting municipality and the affected district municipality;

“cash and cash equivalent”, means cash or cash equivalent balances as defined in accordance with the accounting standards that the splitting municipality or affected district municipality are by legislation required to apply in preparing annual financial statements, which are held or owned by that splitting municipality or the affected district municipality;

“cash and cash equivalent attributable to ring-fenced services and functions” means cash or cash equivalent balances held by a municipality for ring-fenced specific services or ring-fenced in a specific service area of a splitting municipality or affected district municipality as may be required by council policy or legislation;

“cash and cash equivalent backing ring-fenced specific reserves” means cash or cash equivalent balances held by a municipality to back specific reserves of a splitting municipality or affected district municipality as may be required by relevant council policy, accounting policy or legislation;

“cash and cash equivalent backing unspent conditional grants” means cash or cash equivalent balances held by a municipality to back unspent conditional grants of a splitting municipality or affected district municipality as may be required by council policy, accounting policy, conditional grant agreement or legislation;

“residual cash and cash equivalents” means the remainder of cash and cash equivalents after deducting the cash and cash equivalents attributable to ring-fenced services and functions, backing ring-fenced specific reserves and backing unspent conditional grants;

“Demarcation Act”, means the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998)

“Department”, means the KwaZulu-Natal Department of Cooperative Governance and Traditional Affairs;

“Effective date” means the date of the declaration of the election results by the Electoral Commission established in terms of section 3 of the Electoral Commission Act, 1996 (Act No 51 of 1996) in respect of the local government election in 2016;

“employee benefit liabilities” mean liabilities defined in accordance with the accounting standards that the splitting municipality or affected district municipality is by legislation required to apply in preparing annual financial statements, which are owed by that splitting municipality or the affected district municipality;

“finance lease liabilities” means liabilities defined in accordance with the accounting standards that the splitting municipality or affected district municipality is by legislation required to apply in preparing annual financial statements, which are owed by that splitting municipality or the affected district municipality;

“liabilities” means liabilities defined in accordance with the accounting standards that the splitting municipality or affected district municipality is by legislation required to apply in preparing annual financial statements, which are owed by that splitting municipality or the affected district municipality;

“provisions” means provisions defined in accordance with the accounting policy or accounting standards that the splitting municipality or affected district municipality is by legislation required to apply in preparing annual financial statements, which have been provided for by the splitting municipality or the affected district municipality;

“receiving municipality” means a municipality that will receive portions of a municipality that will cease to exist as a result of the re-determination of boundaries in terms of section 21 of the Demarcation Act, which insofar as it relates to the splitting of the—

- (a) Ntambanana Municipality, refers to the uMfolozi, Mthonjaneni and uMhlathuze Municipalities; and
- (b) Vulamehlo Municipality, refers to the uMdoni and eThekweni Municipalities;

“receivables” means receivables defined in accordance with the accounting policy or accounting standards or that the splitting municipality or affected district municipality is by legislation required to apply in preparing annual financial statements, that are owned by that splitting municipality and the affected district municipality;

“receivables attributable to specific capital assets” means receivables that arose due to rentals, proceeds on sale of capital assets or other amounts due as a result of the use or disposal of capital assets under the control of a splitting municipality or affected district municipality;

“receivables attributable to specific functions” means receivables that arose due to outstanding service charges, surcharges, interest, penalties or any other amounts due as a result of rendering of a specific service in a specific area of a splitting municipality or affected district municipality;

“other receivables” means receivables other than receivables attributable to specific capital assets and receivables attributable to specific functions;

“splitting municipality” means the Ntambanana and Vulamehlo Municipalities, which will cease to exist as a result of the re-determination of boundaries in terms of section 21 of the Demarcation Act;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“unspent conditional grants” means unspent conditional grants, as defined in accordance with the accounting policy or accounting standards that the splitting municipality or affected district municipality is by legislation required to apply in preparing annual financial statements, which are held by that splitting municipality or the affected district municipality;

“unspent conditional grants attributable to assets” means unspent conditional grants that are held by the splitting municipality or affected district municipality to meet certain conditions relating to the construction, purchase, up-keep or maintenance of capital assets under the control of a splitting municipality or affected District Municipality;

“unspent conditional grants attributable to a specific service” means unspent conditional grants that are held by the splitting municipality or affected district municipality to meet certain conditions relating to the rendering of a service or provision of a specific service of a splitting municipality or affected District Municipality;

“unspent conditional grants attributable to staff” means unspent conditional grants that are held by the splitting municipality or affected district municipality to meet certain conditions relating to the remuneration, training or other expenditure relating to the staff members or councillors of a splitting municipality or affected District Municipality; and

“transfer agreement” means a transfer agreement contemplated in terms of paragraph 36 of this model.

Application

3. Unless otherwise stated, insofar as it relates to the transfer of affected functions of an affected district municipality to a receiving municipality, all the effects contemplated in the split model relating to a splitting municipality will apply to an affected District Municipality.

Assets

4.(1) The splitting Municipality must transfer assets essential to the performance of a transferred municipal service to the receiving municipality.

(2) Unless agreed otherwise in a written transfer agreement, the principle for allocation of an immovable asset must be the physical location of the asset.

(3) In the case of Information Technology licences, distribution of licences will follow the allocation of the Information Technology hardware and users thereof.

(4) Movable assets allocation must be based on the user of the assets subject to the following:—
(a) the needs of the receiving Municipalities must be taken into consideration; and
(b) any deviation from the principle, on the basis of the needs of receiving municipalities, must be clearly provided for in the transfer agreement.

(5) Debt under trade receivables must be allocated based on the physical location of the property billed.

(6) Receivables attributable to specific capital assets must follow the capital asset.

(7) Receivables attributable to specific functions must follow the specific service.

(8) Other receivables may either be impaired or collected and proceeds distributed in accordance with the definition of cash and cash equivalent.

(9) Outstanding amounts on Value Added Tax receivable must be collected and proceeds be distributed in accordance with the definition of cash and cash equivalent.

Liabilities

5.(a) All accounts payable must be settled before the transfer date.

(b) All accounts payable attributable to assets, must follow the capital asset.

(c) Accounts payable attributable to a specific service or service area must follow the service.

- (d) Unspent conditional grants attributable to assets must follow the capital asset.
- (e) Unspent conditional grants attributable to a specific service or service area must follow the service or service area.
- (f) Unspent conditional grants attributable to staff must follow the transfer of staff.
- (g) As a general rule, provisions must be written off against the unappropriated surplus, unless the nature of the item, as specified in the agreement, justifies the retention of the provisions.
- (h) Transfer of provisions for employee related issues must be based on the agreements reached with the transfer of employees.
- (i) Employee benefit liabilities must follow the transfer of staff.
- (j) Finance Lease Liabilities must follow the capital asset financed.

Investments Cash and Cash equivalents

- 6.(a) Where practically possible and subject to the transfer agreement, all investments must be liquidated to cash or cash equivalents .
- (b) Cash or cash equivalents, attributable to ring-fenced services and functions, must follow the service or function.
 - (c) Cash or cash equivalents, backing ring-fenced specific reserves, must follow the distribution of such reserves.
 - (d) Cash or cash equivalents, backing unspent conditional grants, must follow the allocation of the grant.

Reserves

7. Any accumulated surplus must be distributed according to the proportionate distribution of net assets, excluding residual cash and cash equivalents.

Residual Cash and Cash equivalents

8. Residual cash and cash equivalent transfers must be equal to the residual value of assets and liabilities as well as any reserve funds associated with that service, power or function as allocated in terms of paragraphs 4 to 7 above.

Transfer of staff

- 9.(1) Employees must be distributed subject to—
- (a) approval of the placement policy by the Change Management Committee and councils of the affected municipalities;
 - (b) the human resources needs-analysis of the receiving municipalities;
 - (c) the skills-matching between the needs-analysis of receiving municipalities and available human resources in the splitting municipality; and
 - (d) consultation with affected employees within the approved placement policy.
- (2) The affected municipalities, through the Change Management Committee, must agree on a placement policy, which must provide for—
- (a) the procedures to be followed in the reallocation process of employees of the splitting municipality;
 - (b) structures to be set up to facilitate consultation process for the reallocation of employees of the splitting municipality; and
 - (c) the dispute resolution mechanisms for the placement process.
- (3) Any disputes that may arise out of the reallocation process emanating from—
- (a) the affected municipalities, must be resolved in accordance with the provisions of paragraph 13; and
 - (b) the affected employees, must be resolved in accordance with the provisions of the placement policy, relevant legislation and agreements.

Due diligence

- 10.(a) Before entering into a transfer agreement in accordance with the provisions contained herein, the receiving municipalities must undertake and document a due diligence review of assets and liabilities to be transferred.

(b) The results of the due diligence must be taken into account in any decision to transfer a capital asset or a liability.

Transfer agreement

11.(1) The Change Management Committee must prepare a written transfer agreement, which must be concluded between the splitting and receiving municipalities, and between the affected district and receiving municipalities.

(2) The transfer agreement must provide for the terms and conditions of the transfer, including as a minimum, the following:

- (a) a detailed description of assets transferred;
- (b) the particulars of liabilities transferred;
- (c) proof of notification to the Bank of the new structure, including the transfer of lease liabilities;
- (d) details of all affected employees, including employee files and leave schedules;
- (e) a report in relation to pension fund provisions;
- (f) a detailed list of all projects currently under implementation;
- (g) a detailed report on the stages of completion of each current project being transferred;
- (h) a maintenance schedule for infrastructure assets;
- (i) a detailed valuation roll;
- (j) a complete and accurate billing list;
- (k) an effective date of the transfer of risks and accountability for the asset or assets to the receiving municipality;
- (l) appropriate evidence to support any calculations done by the splitting municipality;
- (m) details of any encumbrance and servitudes;
- (n) details of any outstanding legal matters; and
- (o) details of any other contingent asset or liability.

(3) Any other matter resolved by the Change Management Committee that is contrary to the stipulations of this Notice must be expressly stipulated in the transfer agreement and any supporting documentation to that effect must be annexed.

(4) The splitting municipality and the affected district municipality, guided by this Schedule, must compile all the relevant schedules and supporting documentation to the transfer agreement

Application of the Schedule

12. (a) All matters to be dealt with by the affected municipalities must be resolved on a case-by-case basis, in terms of the needs and practicalities of the transfer process.

(b) Any matters that are agreed to contrary to the provisions of this Schedule must be clearly provided for in the transfer agreement.

Dispute resolution

13.(1) The transfer agreement must clearly outline dispute settlement procedures that are appropriate to the transfer agreement and the matters that are likely to become the subject of a dispute, and must, amongst others, provide for—

- (a) an affected municipality, that is a party to a transfer dispute with another affected municipality, to declare a formal dispute by notifying the other affected municipality of such declaration in writing; and
- (b) parties to make every reasonable efforts, in good faith, to settle the dispute prior to declaring a formal dispute, including the initiation of direct negotiations with the other party through the Change Management Committee.

(2) The role of the MEC responsible for local government must be clearly provided for in the dispute resolution mechanism of the transfer agreement, as contemplated in the Intergovernmental Relations Framework Act (Act No. 13 of 2005).

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