

No. 425

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LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**MUNICIPAL REGULATIONS ON FINANCIAL MISCONDUCT PROCEDURES AND
CRIMINAL PROCEEDINGS**

The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, made the regulations as set out in the Schedule.

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CHAPTER 1 INTERPRETATION

Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context indicates otherwise, and—

“**Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“**designated official**” means the official identified in a municipality or municipal entity to receive reports of allegations of financial offences against councillors or members of the board of directors of municipal entities;

“**disciplinary board**” means a disciplinary board established in terms of regulation 4(1) or a disciplinary board of a district municipality or provincial structure referred to in regulation 4(8);

“**financial misconduct**” means any act of financial misconduct referred to in—

- (a) section 171 of the Act committed by an official of a municipality; or
- (b) section 172 of the Act committed by an official of a municipal entity;

“**financial offence**” means any offence referred to in section 173 of the Act committed by—

- (a) an official of a municipality or municipal entity;
- (b) a councillor of a municipality;
- (c) a member of the board of directors of a municipal entity; or
- (d) any other person;

“**investigator**” means the board, treasury, person or team conducting a full investigation in terms of regulation 5(4).

CHAPTER 2 FINANCIAL MISCONDUCT PROCEDURES

Application of Chapter

2. This Chapter applies to alleged financial misconduct.

Reporting of allegations of financial misconduct

3. (1) Any person must report an allegation of financial misconduct against—
- (a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;
 - (b) an official of a municipality other than its accounting officer, to that accounting officer;
 - (c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;

- (d) an official of a municipal entity other than its accounting officer, to that accounting officer.

(2) The mayor, the accounting officer or chairperson of the board of directors, as the case may be, must table an allegation referred to in sub-regulation (1) before the municipal council or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the council or the board of directors.

(3) The person to whom an allegation of financial misconduct has been reported in terms of sub-regulation (1) must ensure that the report is treated in a confidential manner.

(4) This regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor, member of the board of directors of a municipal entity, or official of a municipality or municipal entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the Act.

(5) An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality or municipal entity as to why he or she should not be suspended, within seven days of being notified of the allegation.

Establishment of disciplinary board and its functioning

4. (1) A municipal council or board of directors of a municipal entity must establish a disciplinary board to investigate allegations of financial misconduct in the municipality or municipal entity, and to monitor the institution of disciplinary proceedings against an alleged transgressor.

(2) A disciplinary board is an independent advisory body that assists the council or the board of directors with the investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.

(3) A disciplinary board must consist of maximum five members appointed on a part-time basis by the council or board of directors for a period not exceeding three years, in accordance with a process as determined by the municipal council or board of directors.

- (4) A member of a disciplinary board must-
- (a) be a natural person;
 - (b) be a citizen or permanent resident of the Republic and resident in the province where the municipality is situated; and
 - (c) not be disqualified under sub-regulation (5).

(5) The following persons are disqualified from membership of a disciplinary board:

- (a) a person who has been convicted of an offence in terms of this regulation or any other legislation;

- (b) a person who, whether in the Republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged document or any offence of which dishonesty is an element;
- (c) a person who has at any time been removed from any office of trust on account of misconduct or dishonesty;
- (d) an accounting officer of a municipality or municipal entity;
- (e) a political office-bearer or a member of a board of directors; and
- (f) a person who is an office-bearer in a political party.

- (6) A disciplinary board may consist of-
- (a) the head of the internal audit unit within the municipality or municipal entity or representative of an organisation performing internal audit functions for the municipality or municipal entity if the internal audit function is outsourced;
 - (b) one member of the Audit Committee of the municipality or municipal entity;
 - (c) a senior manager from the legal division in the municipality or municipal entity;
 - (d) a representative of the National Treasury or the provincial treasury; and
 - (e) any other person as may be determined by the municipal council or board of directors of a municipal entity.

(7) If an official referred to in sub-regulation (6)(a) or (c) is implicated in the financial misconduct, the municipality or municipal entity may co-opt a senior manager in another unit, who does not have a conflict of interest.

(8) If a municipality or municipal entity does not have sufficient capacity to establish a disciplinary board, a disciplinary board established by a district municipality or an equivalent provincial or national structure established for a similar purpose may, with approval of the district municipality or provincial or national structure, be used as a disciplinary board for the municipality or municipal entity.

Preliminary investigation of allegations of financial misconduct

5. (1) On receiving a report in terms of regulation 3(1), if the municipal council, board of directors or accounting officer of the municipality or municipal entity, is satisfied that there is reasonable cause to believe that an act of financial misconduct has been committed, it must within seven days refer the matter to the disciplinary board to conduct a preliminary investigation into the allegation as envisaged in terms of section 171(4)(a) or 172(3)(a) of the Act.
- (2) A disciplinary board must conduct a preliminary investigation to determine whether or not the allegation is founded and make a recommendation to the council or board of directors as to whether sufficient grounds exists to warrant a full investigation into the allegation.
- (3) If, during a preliminary investigation, the disciplinary board determines that the allegation is frivolous, vexatious, speculative or obviously unfounded, the investigation must be terminated.
- (4) If the disciplinary board determines that the allegation is founded, a full investigation must be conducted by-
- (a) the disciplinary board;
 - (b) the provincial treasury or the National Treasury, but only if the conditions specified in regulation 19 apply; or