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JOINT CIRCULAR NO. 1
ISSUED BY:

DEPARTMENT OF COOPERATIVE GOVERNANCE (DCoG)
NATIONAL TREASURY (NT)
SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALGA)

FROM:

- **Director-General: Department of Cooperative Governance**
- **Director-General: National Treasury**
- **Chief Executive Officer: South African Local Government Association**

TO ALL:

- **Heads of Department of responsible for Local Government in the Provinces**
- **Heads of Department of Provincial Treasuries**
- **SALGA Provincial Directors of Operations**
- **Municipal Managers**

**MANAGEMENT OF THE VARIOUS TRANSITIONAL MEASURES:
 PRE AND POST THE 2021 LOCAL GOVERNMENT ELECTIONS (LGE)**

1. PURPOSE OF THE CIRCULAR

- 1.1 This Circular is being issued pursuant to engagements at various forums, and its intention is to guide provinces and municipalities with processing the various transition matters as the 4th term of Municipal Councils come to an end, and as preparations are being made for LGEs to be held on 1 November 2021.

- 1.2 The present term of local government has been characterised by many problems including municipalities being confronted with various governance, infrastructure and service delivery challenges. With the onset of the COVID-19 pandemic during late 2019 and the subsequent placing of the country into various alert levels in terms of the Disaster Management Act No. 57 of 2002¹, municipalities faced further challenges in relation to their revenue generation and revenue collection capabilities.
- 1.3 The circular deals with, amongst other matters, an overview on the District Development Model (DDM); the status of recent developments relating to local government legislation; the various transitional measures that need attention pre-LGE, during establishment, and post the establishment of Municipal Councils, as set out in the table hereunder:

PRE-LGE	DURING ESTABLISHMENT	POST ESTABLISHMENT
<ul style="list-style-type: none"> ▪ Section 12 Notices ▪ Procurement-related matters ▪ Participation of municipal staff in LGE ▪ Preparation of handover reports ▪ Preparation of information packs ▪ Role of Municipal Manager / Municipal Official as Municipal Electoral Officer ▪ Capacity building for Municipal Managers ▪ Continued functioning of Municipal Council 	<ul style="list-style-type: none"> ▪ Virtual meetings ▪ First council meeting ▪ Election of Office-bearers <ul style="list-style-type: none"> ○ Speaker ○ Mayoral Executive Type ○ Collective Executive Type ○ Whip of council ▪ Establishment of MPAC 	<ul style="list-style-type: none"> ▪ Management of Section 139 interventions ▪ Review of the systems of delegation ▪ Development and adoption of IDPs ▪ Establishment of ward committees ▪ Non-returning Councillors ▪ Municipal-owned property and assets ▪ Payment of a once-off gratuity ▪ Integrated Councillor Induction Programme ▪ Code of Conduct for Councillors ▪ Unfunded budget process and criteria for release of funding in December 2021 ▪ Municipal Support and Intervention Plans (MSIPs)

2. DISTRICT DEVELOPMENT MODEL

- 2.1 The advent of the 6th administration post the national and provincial elections during 2019 saw Cabinet adopting the DDM soon after taking office. The introduction of the DDM was aimed at improving cooperative governance and to build a capable, ethical and developmental state. The DDM consists of a process by which joint and collaborative planning is undertaken at local, district and metropolitan levels by all three spheres of government, resulting in a single strategy that is focused on One Plans for each of the 44 districts and 8

¹ Hereinafter referred to as the “Disaster Management Act”.

metropolitan geographic spaces in the country; these districts are seen as the 'landing strip' for integrated planning.

2.2 The objectives of the DDM are to:

- (a) Coordinate a government response to challenges of poverty, unemployment and inequality particularly amongst women, youth and people living with disabilities;
- (b) Ensure inclusivity by gender budgeting based on the needs and aspirations of our people and communities at a local level;
- (c) Narrow the distance between people and government by strengthening the coordination role and capacities at the District and City levels;
- (d) Foster a practical intergovernmental relations mechanism to plan, budget and implement jointly in order to provide a coherent government for the people in the Republic; (solve silo's, duplication and fragmentation) maximise impact and align plans and resources at our disposal through the development of "One District, One Plan, and One Budget";
- (e) Build government capacity to support municipalities;
- (f) Strengthen monitoring and evaluation at district and local levels.
- (g) Implement a balanced approach towards development between urban and rural areas; and
- (h) Exercise oversight over budgets and projects in an accountable and transparent manner.

2.3 All stakeholders are urged to ensure that the work that we are all involved-in embraces the DDM approach.

3. LEGISLATIVE INTERVENTIONS IMPACTING LOCAL GOVERNMENT

3.1 Commencement of the Local Government: Municipal Structures Amendment Act No. 3 of 2021²

- (a) The Structures Amendment Act, which will commence on 1 November 2021, may be broadly categorised as addressing governance-related challenges in municipalities, and secondly, as enhancing the management and administration of local government elections. In essence, the Act will assist municipalities to strengthen governance and oversight and will ensure that municipal operations continue despite attempts to disrupt or stall the functioning of municipalities.
- (b) Provinces must take note that when determining the type of municipality, the Structures Act will no longer provide for plenary municipal councils. Secondly, any Councillor who

² Hereinafter referred to as the "Structures Amendment Act".

is removed from office for a breach of the Code of Conduct for Councillors³ may not stand as a candidate in an election for any municipal council for a period of two years from the date on which such person was removed from office. Provinces are therefore requested to immediately report this to the Electoral Commission, DCoG and SALGA when such removal takes place.

- (c) Municipalities must also take note of the following important interventions, requirements and clarity provided in the Structures Amendment Act:
- (i) Municipalities must keep a record of the authorised representative of political parties to perform the functions in section 27(2)⁴ and 43(2)(d) and (e)⁵;
 - (ii) Councillors will be declared elected on the date of publication of the results of the LGE in the Gazette by the IEC;
 - (iii) Number of Councillors that are required to form a quorum when decisions are taken;
 - (iv) Additional functions provided for the Speaker of council;
 - (v) Uniform formula for the awarding of seats on an executive committee⁶;
 - (vi) Whip of a municipal council is elected in terms of section 41A of the Structures Act;
 - (vii) Ward committees must be established within 120 days;
 - (viii) Establishment of municipal public accounts committee (MPAC)⁷; and
 - (ix) Inclusion of the Code as Schedule 7.
- (d) A detailed Circular to guide interpretation and implementation of the Act, will be issued to municipalities and stakeholders in due course. Municipalities are requested to, in the meantime, familiarise themselves with the Act, for effective implementation and application by Council, including amending the Standing Rules and Orders to be in compliance with the Act.

3.2 Implications of the Constitutional Court Judgment Invalidating the Local Government: Municipal Systems Amendment Act No. 7 of 2011⁸

- (a) On 9 March 2017 the Constitutional Court⁹ declared the Municipal Systems Amendment Act of 2011 as unconstitutional and invalid in its entirety.

³ Hereinafter referred to as the “Code”.

⁴ Only an authorised representative may inform the Municipal Manager of a vacancy.

⁵ Seat/s that are allocated to a political party or political interest in an executive committee are appointed or a vacancy is filled through the authorised representative.

⁶ Discussed in further detail in paragraph 5 – establishment of Municipal Councils.

⁷ Discussed in further detail in paragraph 5 – establishment of Municipal Councils.

⁸ Hereafter referred to as the “Municipal Systems Amendment Act of 2011”.

⁹ SAMWU v Minister of CoGTA (CCT54/16) [2017] ZACC 7; 2017 (5) BCLR 641 (CC),

- (b) As of 9 March 2019, municipalities were required to comply with the Local Government: Municipal Systems Act No. 32 of 2000¹⁰, including all amendments made until 2008, but excluding the amendments introduced by the Systems Amendment Act of 2011.
- (c) The Local Government: Municipal Systems Amendment Bill, 2019 (“the Bill”), which is presently being processed through Parliament, contains the same provisions as the Municipal Systems Amendment Act of 2011. It is envisaged that the Bill will be finalised as soon as Parliament reconvenes after the LGE.
- (d) On 2 December 2019, Circular 2 of 2019 was issued by DCoG. The Circular clarified which provisions of the Systems Act continue to be valid, after the declaration of invalidity by the Court, and provided transitional measures to be applied by municipalities until such time that the Bill is assented to by the President. Municipalities are requested to familiarise themselves with the Circular until such time the Bill is signed into law by the President.

3.3 Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers, 2014¹¹

- (a) The Appointment Regulations empower the municipal council to review its staff establishments within a period of 12 months from the date of the election **only** after the following:
 - (i) The election of a new council;
 - (ii) The adoption of a new IDP;
 - (iii) Substantial or material changes to the functions of the municipality; and
 - (iv) The redetermination of new municipal boundaries of a municipality.
- (b) The Appointment Regulations afford the new municipal councils an opportunity to align the IDP, budget and the staff establishments. The revised staff establishment can only be approved by the majority of municipal councillors to mitigate against possible bloating of municipal administrations in non-core business areas.

3.4 Contracts of Municipal Managers and Other Staff Members

- (a) Municipal Managers
 - (i) Section 57(6)(a) of the Municipal Systems Act prescribes that “the employment contract for a municipal manager must be for a fixed term of employment up to a

¹⁰ Hereinafter referred to as the “Municipal Systems Act”.

¹¹ Hereafter referred to as the “Appointment Regulations”.

maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality".

(ii) In a judgment of the Supreme Court of Appeal handed down on 7 October 2020¹², the court found in terms of s 57(6)(a) of the Municipal Systems Act that the employment contract of a Municipal Manager has a maximum fixed term of five years, which cannot be renewed or extended – once the five year period has elapsed the position of a Municipal Manager becomes vacant and thus subject to the nationally competitive procedures – any renewal thereafter is null and void *ab initio* – this is irrespective of whether the provisions of the employment contract as Municipal Manager stipulated the terms of its renewal within the meaning of that expression in section 57(6)(c).

(iii) The contract of a Municipal Manager cannot be validly extended beyond the one-year fixed term after the election of the next council of the municipality.

(b) Managers Directly Accountable to Municipal Managers

(i) Section 57(7) of the Municipal Systems Act empowers the Municipal Council to "extend the application of the provisions of section 57(6) to a manager directly accountable to the Municipal Manager".

(ii) In a judgment of the Labour Court of South Africa, Durban Division, on 25 January 2017¹³, the court found that the power to conclude a fixed term contract of a manager directly accountable to the Municipal Manager arises only once a municipality exercises its discretion under section 57(7) of the Act – a fixed term contract can only be effected in terms of section 57(6) of the Act – so, termination one year after elections also forms part of the terms of contract.

(iii) Therefore, the principles in paragraph (a) above apply. Notwithstanding this and in an endeavor to minimise disruptions in the functioning of municipalities, any fixed-term contract of a manager directly accountable to the Municipal Manager concluded before the date of this Circular, shall continue until it lapses or is terminated as per agreement between the parties.

(c) Contracts of Support Staff in Offices of the Public Office-bearers (POBs)

(i) A person appointed to a post on the approved staff establishment in order to support the office of a public office-bearer, must either be seconded from a post on that municipality's approved staff establishment or another municipality's staff

¹² Mawonga and Another v Walter Sisulu Municipality and Others (Case no 574/19) [2020] ZASCA 125.

¹³ *Biyela v Nongoma Local Municipality* (Case No. D1321-13).

establishment, or be appointed on a fixed-term contract of employment linked to the term of office of the public office-bearer.

- (ii) The duration of the secondment or fixed-term employment contract contemplated herein cannot be validly extended beyond a period of 30 days after the public office-bearer vacates office.

3.5 Local Government: Municipal Staff Regulations, 2021¹⁴

- (a) On 20 September 2021 the Minister published the Municipal Staff Regulations, 2021 in the Gazette, and which mainly cascades uniform standards for municipal managers and other senior managers to staff below senior management echelons.
- (b) The Municipal Staff Regulations, 2021 provide for:
 - (i) Setting out uniform norms and standards for organisational design;
 - (ii) Build institutional capacity for municipalities by setting out uniform appointment criteria and procedures for municipalities staff below senior management echelons;
 - (iii) Provides a competency framework which lays down the basis for sector-wide skills audit and skills development programmes;
 - (iv) cascade Performance management system to staff below management echelons;
 - (v) Municipal staff establishment, job description and job evaluation;
 - (vi) Recruitment, selection, appointment and transfer of staff;
 - (vii) Training, competencies and skills development;
 - (viii) Supervision and management of staff; and
 - (ix) Promotion and demotion of staff.
- (c) As the Municipal Staff Regulations, 2021 come into effect on 1 July 2022, municipalities and provinces are required to develop implementation plans in preparation for the commencement of the regulations.

3.5 Funding of Political Party Activities

- (a) The Constitution of the Republic of South Africa, 1996¹⁵ and the Political Party Funding Act No. 6 of 2018 only addresses the funding of political parties on national and provincial level.

¹⁴ Hereinafter referred to as the “Municipal Staff Regulations”.

¹⁵ Hereinafter referred to as the “Constitution”.

- (b) The Constitution does not provide for the public funding of political parties represented in local government. In the context of South Africa, all the major parties that are represented in the national and provincial legislatures would be entitled to funding from public funds. But there are other smaller parties sponsored by residents and rate-payers associations which are represented in local government only and, therefore, do not qualify for public funding in terms of section 236 of the Constitution.
- (c) It is thus clear that there is no legislative provision allowing for the funding of any political party at local government level, including funding in payment or in kind by the municipality to any political party contesting the LGE.
- (d) Any official or public office bearer who instructs or makes any expenditure in contravention of the MFMA¹⁶ will be liable for the expenditure in terms of section 32 of the MFMA and may be charged for financial misconduct in terms of the provisions of the MFMA, and the related regulations¹⁷ issued in terms of the MFMA.
- (e) Municipalities must therefore not make any funding, in payment or in kind, available to any political party or any party representative leading up to the LGE to be held on 1 November 2021.

4. MATTERS TO BE DEALT WITH PRIOR TO 2021 LGE

4.1 Notices in terms of Section 12 of the Municipal Structures Act, 1998

- (a) Existing section 12 Notices must be revised to provide for any changes that may have occurred during the term. This will include changes to the number of Councillors; wards; type of municipality; name of the municipality; and outer boundaries.
- (b) The revision of the section 12 Notices requires consultation with SALGA and affected municipalities, and final notices in this regard ought to have been published in *Provincial Gazettes* before the end of September 2021.

4.2 Procurement-related Matters

Municipalities are urged to refrain from entering into any large-scale procurement of goods and services, concessions and alienation of immovable properties, especially in relation to assets and immovable property, but to rather defer such procurement and alienation of immovable properties to the incoming council after the LGE.

¹⁶ Local Government: Municipal Finance Management Act No. 56 of 2003 - Hereinafter referred to as the “MFMA”.

¹⁷ Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014, and the Municipal Cost Containment Regulations, 2019.

4.3 Participation of Municipal Staff in LGE

- (a) The participation of candidates in LGE elections is provided for in the Electoral Act¹⁸, the Local Government: Municipal Electoral Act No. 27 of 2000¹⁹, and the Regulations regarding the Participation of Municipal Staff Members in Elections, 2011²⁰ (issued in terms of the Municipal Systems Act).
- (b) The LGE Regulations for municipal staff provides that if a municipal employee is issued with a certificate by the IEC in terms of section 31(3) of the Electoral Act, or section 15(3) or 18(1)(d) of the Municipal Electoral Act, then such staff member (or employee) shall, on the working day following the day on which she or he receives the certificate, present a copy of the certificate to her or his employer.
- (c) The staff member is thereafter deemed to be on annual leave from the working day that the certificate is received until the date on which the results are declared by the IEC. If the employee is elected, then the person must apply for further annual leave until their resignation from the municipality. If the employee does not have sufficient annual leave, then the person is deemed to be on unpaid leave for the period of leave taken in excess of the available annual leave.
- (d) The staff member is prohibited from using any property (either movable or immovable) of the municipality and may not, during working hours, utilise or accept assistance from any staff member of the municipality, for their election campaign.
- (e) Any staff member contravening the LGE Regulations for municipal staff shall be guilty of misconduct. Municipal Managers must therefore monitor and ensure strict compliance with the above-mentioned provisions.

4.4 Preparation of Handover Reports

- (a) Each Municipal Manager, working together with the Chief Financial Officer and other senior managers, must prepare a hand-over report that can be tabled at the first meeting of the newly elected council. The aim of this hand-over report is to provide the new councils with important orientation information regarding the municipality; the state of its finances; service delivery and capital programme; as well as key issues that need to be addressed.
- (b) It is proposed that the hand-over report should include:

¹⁸ Electoral Act No. 73 of 1998.

¹⁹ Hereinafter referred to as the "Municipal Electoral Act".

²⁰ Hereinafter referred to as the "LGE Regulations for municipal staff".

- (i) An overview of the demographic and socio-economic characteristics of the municipality;
- (ii) Approved annual institutional calendar of council, committees, and other organs of the municipality;
- (iii) An overview of the macro-organisational structure of the municipality with departmental core functions, with the names and numbers of senior managers;
- (iv) Appointment of Municipal Manager and managers directly reporting to the Municipal Manager, and status of contracts of employment;
- (v) An overview of key municipal policies that Councillors need to be aware of, and where they can obtain the full text of such policies;
- (vi) An overview of issues that still need to be addressed in relation to the municipality meeting its targets for the various programmes;
- (vii) An overview of the municipality's financial health, with specific reference to:
 - Its cash and investments, and its funding of commitments;
 - Cash coverage of normal operations;
 - Status of budget (funded or unfunded?);
 - Creditors outstanding for more than 30 days, along with reasons for delayed settlement;
 - Current collection levels and debtors outstanding for more than 30 days; and
 - Extent of existing loans, and associated finance and redemption payments;
- (viii) The municipality's audit outcomes for the past three financial years (FY), and its strategy to address audit issues / shortcomings;
- (ix) State of Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFWE) including progress to date in terms of processes in terms of section 32 of the MFMA;
- (x) State of consequence management in the municipality and status report consistent with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014;
- (xi) An overview of the:
 - provision of basic services, including plans to address backlogs;
 - state of the municipality's assets, with particular reference to the asset management plan, and repairs and maintenance requirements;
 - national reforms that the municipality is participating in, as well as the national interventions that the municipality is part thereof;
 - state of cooperative government and inter-governmental relations; and
 - governance system and structures (section 79 and 80 committees);
- (xii) Report on the procurement of goods and services, concessions and alienation of immovable property since 1 June 2021;

- (xiii) A list of the main infrastructure projects planned for the 2021/2022 budget and Medium-Term Revenue and Expenditure Framework (MTREF);
 - (xiv) A list of key processes requiring council input over the next six months / until the end of the FY, e.g. revision of the IDP, approval of specific policies, etcetera;
 - (xv) A list of support programmes to the municipality initiated either through donors such as the European Union, Swiss, German Development Cooperation, or National Treasury (MFIP) and Provincial Treasury driven initiatives;
 - (xvi) Any litigation the municipality maybe facing; and
 - (xvii) Any other information deemed to be important;
- (c) In addition to the hand-over report, each new Councillor should be given the municipality's revised IDP; the adopted 2021/2022 budget; the mid-year budget and performance assessment report for 2020/2021; the latest monthly financial statement; and the annual report for 2019/2020.
- (d) Municipal Managers should submit their municipality's hand-over report to the provincial department responsible for local government, to the DCoG, to the National Treasury, and to SALGA, by 28 October 2021.

4.5 Preparation of Information Packs

- (a) In preparation for the convening of the first council meeting post the LGE, municipalities must ensure that, at the least, the following information be made available to all Councillors by way of preparing information packs:
- (i) Handover report (as required by paragraph 4.4 above);
 - (ii) Handover report, as required by the MFMA Circular No. 108;
 - (iii) Copy of this Circular;
 - (iv) Section 12 Notice;
 - (v) IDP for the 2021 / 2022 FY;
 - (vi) Mid-year budget and performance assessment report the 2020 / 2021 FY;
 - (vii) Latest monthly financial statement;
 - (viii) Approved budget for the 2021/22 FY;
 - (ix) The process for addressing an unfunded budget and adopted funding plan²¹;
 - (x) Service delivery and Budget Implementation Plan for 2021/22;
 - (xi) Approved financial recovery plan²² (FRP), if applicable²³;

²¹ Refer to paragraph 6.8.

²² Hereinafter referred to as the "FRP".

²³ The FRP that is formally prepared for municipalities under intervention is not synonymous with the Municipal Support and Intervention Plan (MSIP). The approved FRP takes precedence where formal interventions (discretionary and mandatory) have been invoked in a municipality, and a FRP has been developed and approved for implementation.

- (xii) Resolutions and minutes of council meetings in last three months leading up to the LGE;
- (xiii) Section 139 intervention package, if applicable;
- (xiv) Annual report for the 2019 / 2020 FY;
- (xv) Draft annual report for the 2020 / 2021 FY;
- (xvi) Copy of the UIFWE reduction plan;
- (xvii) List of the powers and functions that the municipality is authorised to perform;
- (xviii) Report on status quo of the implementation of consequence management within the municipality aligned to the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014;
- (xix) State of MFMA Compliance within the municipality including indication of how the compliance gaps will be addressed;
- (xx) Government Gazette: Upper limits for the remuneration of Councillors;
- (xxi) Standing Rules of Order;
- (xxii) Local government legislation (including the Code of Conduct for Councillors);
- (xxiii) Documentation for the Integrated Councillor Induction Programme;
- (xxiv) Copy of the One Plan for the District within which the Municipality is located;
- (xxv) A copy of the Municipal Support and Intervention Plan of the Municipality;
- (xxvi) A copy of the District Recovery Plan of the District within which the Municipality is located;
- (xxvii) A copy of the FRP and progress report thereof of Municipality where an intervention is still in force; and
- (xxviii) A copy of the economic recovery plan.

4.6 Role of the Municipal Manager / Municipal Official as Municipal Electoral Officer

- (a) All arrangements pertaining to the LGE are led and championed by the IEC in terms of the Municipal Electoral Act, including the appointment of local representatives of the IEC in the municipality²⁴.
- (b) The officials are also referred to as the Municipal Electoral Officer (MEO), presiding officers for each voting station, election officers and counting officers. The MEO positions are predominantly filled by municipal officials, and in certain instances, it may be the Municipal Manager, but it can also be another official or person not in the service of the municipality.
- (c) The MEO exercises the powers and performs the duties assigned to him or her in terms of the Municipal Electoral Act, and does so subject to the direction, control and disciplinary authority of the Chief Electoral Officer.

²⁴ Section 12 of the Municipal Electoral Act.

- (d) The delegation and assignment of functions to the MEO does not prevent the IEC or its Chief Electoral Officer from exercising the power or performing the duty itself. The Chief Electoral Officer determines the terms and conditions of appointment as well as the remuneration package of the MEO. On appointment, a declaration of secrecy needs to be signed by the person appointed as the MEO. The Chief Electoral Officer of the IEC may remove the MEO from his or her office. The IEC may also appoint sub-MEOs to assist the MEO in fulfilling his or her duties.
- (e) The IEC has indicated that the availability of MEOs and/or municipal infrastructure for key periods in the electoral timetable (especially during voter registration, candidate nomination, party liaison committees and voting day and results declaration period) is of critical importance to the success of the elections.
- (f) Municipalities might also be required to provide support to specific voting districts with regard to water and electricity supply, and in particular rural areas access roads to such voting districts.

4.7 Capacity Building for Municipal Managers

- (a) As there may be instances where Municipal Managers (or persons mandated to call the first council meeting) were not previously involved in chairing the first meeting of a council, SALGA will convene a National Municipal Managers Workshop on 20 October 2021 to ensure that such persons are adequately capacitated to manage the first meeting of the council.
- (b) The proposed workshops should be held prior to the holding of the LGE. Officials from the IEC should also be invited to these workshops.

4.8 Continued Functioning of Municipal Council

- (a) Section 26²⁵ of the Municipal Structures Act provides as follows:
 - “(1) A person-*
 - (a) is elected as a member of a municipal council for a period ending when the next council is declared elected; or*
 - (b) is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected.*
 - (2) A person assumes office as a councillor when declared elected or when appointed, as the case may be.”*

²⁵ Term of office of Councillors

- (b) From the aforesaid, the term of office for incoming Councillors commences once such Councillors are declared elected, and the term of office for incumbent Cllrs ends when the newly elected council is declared elected. Similarly, current / incumbent office-bearers will retain their positions until the results of the 2021 LGE are declared.
- (c) This means that the council and all its political structures can proceed with their day-to-day functions until the results for the LGE are declared. In practice, however, Councillors normally proceed with their functions until the day of the LGE.
- (d) Until the declaration of the results the current council structures remains in place, and it is recommended that all Council, MAYCO, EXCO meetings and meetings of other political structures continue to ensure that services delivery to communities are not affected during the run-up to the LGE.

5. ESTABLISHMENT PHASE / FIRST COUNCIL MEETING

5.1 Virtual Meetings

- (a) Since the advent of COVID-19, most municipalities have conducted their meeting on virtual platforms, in compliance with the Regulations issued in terms of the Disaster Management Act.
- (b) Considering the possibility that incoming Councillors are likely to only receive documents and tools of trade at the first council meeting, due consideration and guidance would have to be given on the convening of the first council meeting in line with the regulations issued in terms of the Disaster Management Act.

5.2 First Council Meeting

- (a) Section 23(4) of the Municipal Structures Act requires that a local council must appoint its representatives to the district council within 14 days after the result of the election of the local council has been declared.
- (b) Section 29(2) of the Municipal Structures Act requires the Municipal Manager of a municipality or, in the absence of the Municipal Manager, a person designated by the MEC for local government in the province, to call the first meeting of the council of that municipality within 14 days after the council has been declared elected or, if it is district council, after all the members to be appointed by local councils have been appointed.
- (c) The number of Councillors that must be considered **when determining a quorum** is the number that was determined by the MEC in terms of section 20 of the Structures Act (also appears in the section 12 Notice), and this quorum is required at the time when voting takes place.

- (d) It is envisaged that the first meetings of all municipal councils will be completed before the end of November 2021.

5.3 Election of Office-bearers

The election of municipal office-bearers is provided for in Schedule 3 of the Municipal Structures Act and must be conducted in the following order of sequence, where applicable, as provided for by the Structures Act.

(a) Speaker

- (i) The Speaker will be elected from amongst the members of the council; this election will be presided over by the person mentioned in 5.2(b) above.

(b) For Mayoral Executive Type Municipality -

(i) Election of Executive Mayor and Executive Deputy Mayor

The council must elect an executive mayor, and if the MEC for local government in the province so approves (which will be provided for in the Section 12 Notice), also an executive deputy mayor, from among its members.

(ii) Appointment of Mayoral Committee (MAYCO) by the Executive Mayor

If a municipal council has more than nine members, its executive mayor must appoint a MAYCO from among the Councillors to assist the executive mayor. The MAYCO must consist of the deputy executive mayor (if any) and as many Councillors as may be necessary for effective and efficient government, provided that no more than 20 per cent of the Councillors or 10 Councillors, whichever is the least, are appointed.

(iii) Election of Whip of Council

Each municipal council may elect a whip from among the Councillors. The speaker of the municipality presides over the election of the whip

(iv) Establishment of MPAC

A municipal council must establish a committee called the municipal public accounts committee (MPAC). The mayor or executive mayor, deputy mayor or executive deputy mayor, any member of the EXCO, any member of the MAYCO, speaker, whip and municipal officials are **not** allowed to be members of the MPAC.

(c) For Collective Executive Type Municipality

(i) Determination of Executive Committee (EXCO)

Section 43 of the Structures Act (as amended through Act No. 3 of 2021) now requires that the award of seats on the EXCO to political parties is determined by a formula that is prescribed in the Act. Political party representatives on the EXCO are done through its authorised representative²⁶, and nothing precludes a political party or political interest from nominating a Councillor from another political party or political interest to one or more of its allocated seats.

It must be noted that after the application of the formula, and if the calculation results in a surplus, then that surplus must compete with other similar surpluses, and the seat on the EXCO is to be then awarded to the highest surplus. However, if there is an equality of the surpluses, the result **must then be determined by lot**, as is done in the instances mentioned below (Schedule 1 and 3 of the Municipal Structures Act).

Item 8 in Schedule 1²⁷ of the Structures Act provides that, when two or more ward candidates receive an equal number of votes in an election, **the result will be determined by lot**.

Additionally, Item 8 in Schedule 3²⁸ of the Structures Act provides that *“if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting **must determine by lot** who of the two candidates will hold the office for which the election has taken place”*.

(ii) Election of Mayor and Deputy Mayor

The municipal council must elect a member of its EXCO as the mayor and, if the MEC for local government in the province so approves (which will be provided for in the Section 12 Notice), another member of the EXCO as the deputy mayor, of the municipality.

(iii) Election of Whip of Council²⁹

²⁶ See paragraph 3 above.

²⁷ Electoral System for Metro and Local Councils

²⁸ Election of Municipal Office Bearers

²⁹ See para 5.3(b)(iii) above.

(iv) Establishment of MPAC³⁰

6. POST ESTABLISHMENT PHASE

6.1 Management of Section 139 Interventions

- (a) There are currently 30 municipalities across the country that are under different modes of intervention, with the majority of the interventions being of a discretionary nature.
- (b) There is also a process to initiate mandatory interventions into 43 municipalities assessed as being in a financial and service delivery crisis. These municipalities have breached the threshold for intervention and therefore a mandatory intervention has been identified as the appropriate corrective measure. The National Treasury, through the Municipal Finance Recovery Services (MFRS) unit will facilitate the preparation of FRPs for each of these municipalities. The FRP will thus constitute the only plan/instrument to guide the recovery of the municipalities. In these municipalities, a Municipal Support and Intervention Plan (MSIP) will not be required.
- (c) This section is intended to guide those municipalities that were placed under intervention in terms of section 139 of the Constitution (and in some instances, in conjunction with section 139 of the MFMA), prior to the LGE.
- (d) Alongside this process, DCoG is engaged in the development of MSIPs for all municipalities in the country. These processes are being clarified so as to avoid confusion amongst the affected municipalities.
- (e) Where an intervention has been invoked and a FRP prepared by the MFRS unit and approved by the MEC for Finance in a Province, that FRP will be the primary instrument to be used to guide the recovery of the municipality. The MSIP will feed into the FRP where necessary, to ensure that all support related activities are coordinated under the FRP process.
- (f) In the absence of guidance in the Constitution or any other legislation as to what should happen to municipalities under intervention during the transition from one term of Municipal Councils to the next, as occasioned by LGEs, this section is intended to guide affected municipalities and provinces on what needs to be done in these instances.
- (g) Indicated in the table below are the various prevailing interventions, with guidance on how they should be managed post the LGE:

³⁰ See para 5.3(b)(iv) above.

Type of Intervention	Guidance on how to manage intervention post the 1 November 2021 LGE
<p>Section 139(1)(a) of Constitution</p> <p>(where provincial executive issued instruction/ directive to a municipality)</p>	<ul style="list-style-type: none"> ▪ Section 139(1)(a) constitutes a “Directive” and an instruction to a municipality by the provincial executive council³¹ (PEC), to either do, or not do, specific actions or instructions. ▪ The provincial intervention will only be terminated by the PEC once the municipality has complied with the Directive within the allocated timeframes.
<p>Section 139(1)(b) of Constitution</p> <p>(where provincial executive assumed executive obligations and appointed a ministerial representative)</p>	<ul style="list-style-type: none"> ▪ The provincial intervention must continue to be in operation and effective upon the newly declared Municipal Council, until such time that the municipality has demonstrated that it is able, in terms of capacity and willingness, to fulfil the executive obligation for which the intervention was originally invoked. ▪ Provinces must conduct an impact assessment to evaluate progress and identify obstacles that impede effective implementation of the intervention in a municipality. ▪ The PEC must identify an appropriate form of intervention for implementation, depending on the outcome of the assessment. ▪ The intervention must only end if the municipality has demonstrated that it is able, in terms of capacity and willingness, to fulfil the executive obligation for which the intervention was originally invoked and the financial problem that has been caused by or has caused the failure by the municipality to comply with that obligation is resolved. ▪ In the event, the provincial executive inappropriately appointed an administrator for assumption of responsibility for the fulfilment of the specified executive obligation without the Council being dissolved, the provincial executive must convert such administrator into a provincial executive representative.
<p>Section 139(1)(c) of Constitution</p> <p>(where municipal council was dissolved and appoint an administrator)</p>	<ul style="list-style-type: none"> ▪ The provincial intervention will continue to be effective after the new Municipal Council has been declared elected as far as it relates to the municipal recovery plan. ▪ The Administrator’s term automatically comes to an end upon a new Municipal Council being declared elected. There is no need for the PEC to resolve to withdraw the administrator. ▪ If the PEC resolves not to assume responsibility for the implementation of the financial recovery plan, it may for transition and handover purposes, consider the conversion of the administrator into a Provincial Executive Representative for a period of 6 months depending on the status quo analysis of the municipality; the latest report provided by the administrator; and the progress report on implementation of the municipal recovery plan. ▪ Depending on the status quo analysis on the capacity of the municipality to implement the municipal recovery plan, the PEC may resolve to identify an appropriate type of intervention for the purpose of implementation of the municipal recovery plan.

³¹ Hereinafter referred to as the “PEC”.

Type of Intervention	Guidance on how to manage intervention post the 1 November 2021 LGE
<p>Section 139(5)(a) of Constitution, read with Section 139 of MFMA-</p> <p>(where the provincial executive has only imposed a recovery plan)</p>	<ul style="list-style-type: none"> ▪ The provincial intervention will continue to be effective upon the new Municipal Council being declared elected. ▪ The termination of the provincial intervention will only be resolved by the PEC once the municipality has met the conditions for termination, as provided for in section 148(2) of the MFMA. ▪ For ease of reference, section 148(2) of the MFMA provides that a mandatory intervention must end when the crisis in the municipality's financial affairs has been resolved and the municipality's ability to meet its obligations to provide basic services or its financial commitments is secured.
<p>Section 139(5)(a) and (b) of Constitution-</p> <p>(where the provincial executive has imposed a recovery plan, and dissolved the municipal council and appointed an administrator)</p>	<ul style="list-style-type: none"> ▪ The provincial intervention will continue to be effective after the new Municipal Council has been declared elected, as far as it relates to the imposed recovery plan. ▪ The Administrator's term automatically comes to an end upon a new Municipal Council being declared elected. There is no need for the PEC to resolve to withdraw the administrator. ▪ If the PEC resolves not to assume responsibility for the implementation of the financial recovery plan, it may for transition and handover purposes, consider the conversion of the administrator into a Provincial Executive Representative for a period of 6 months depending on the status quo analysis of the municipality; the latest report provided by the administrator; and the progress report on implementation of the municipal financial recovery plan. ▪ Depending on the status quo analysis on the capacity of the municipality to implement the recovery plan, the PEC may resolve to assume the responsibility for the implementation of the recovery plan.
<p>Section 139(5)(a) and (c) of the Constitution-</p> <p>(where the provincial executive has imposed a recovery plan and assumed the responsibility for the implementation of the recovery plan without dissolving the municipal council)</p>	<ul style="list-style-type: none"> ▪ The provincial intervention will continue to be effective after the new Municipal Council has been declared elected, as far as it relates to the imposed recovery plan. ▪ Depending on the status quo analysis on the capacity of the municipality to implement the recovery plan, the PEC may resolve to proceed with the assumption of the responsibility for the implementation of the recovery plan. ▪ If the PEC resolves not to proceed with assumption of responsibility for the implementation of the financial recovery plan, it may for transition and handover purposes, retain a Provincial Executive Representative for a period of 6 months depending on the status quo analysis of the municipality; the latest report provided by the administrator; and the progress report on implementation of the municipal financial recovery plan.
<p>Section 139(7) of the Constitution-</p> <p>(where national executive imposed recovery plan, dissolved council or assumed responsibility)</p>	<ul style="list-style-type: none"> ▪ The above guidelines apply <i>mutatis mutandis</i> to the national intervention invoked in terms of section 139(7) of the Constitution, which provides for the national executive to intervene in terms of section 139(5) of the Constitution when the provincial executive cannot or does not adequately exercise the powers and functions referred to in section 139(5) of the Constitution.

Type of Intervention	Guidance on how to manage intervention post the 1 November 2021 LGE
Reporting Arrangements on municipalities under intervention	<ul style="list-style-type: none"> ▪ The affected municipalities must submit monthly reports on the implementation of the discretionary intervention and recovery plan to the MEC for Finance and the MEC for CoGTA, respectively. The MECs, on behalf of the PEC, must submit progress reports to the Minister of Finance, the Minister of CoGTA, provincial legislatures, and the National Council of Provinces, depending on the mode of intervention. ▪ The MEC for Finance and the MEC for CoGTA, with the former on mandatory intervention and the latter regarding discretionary intervention, must conduct a review of the implementation of interventions and recovery plan to determine if there is progress in resolving the municipality's financial crisis, provision of services and its recovery, and determine the effectiveness of any recovery plan imposed on the municipality. ▪ The municipality concerned must submit quarterly progress reports on the implementation of the Directive to the MEC for CoGTA, who must subsequently verify same, and thereafter submit such report to the Minister of COGTA.

6.2 Review of the Systems of Delegation

- (a) As far as the delegation of functions to the administration is concerned, all delegations and functions of the administrative structures and management of the municipality remain in place during the election period.
- (b) Section 59(2)(f) of the Municipal Systems Act, determines that the system of delegations of a municipality must be reviewed when a new council is elected or in the case of a district municipality, when it is elected and appointed. The system of delegations of each municipality will have to be reviewed by the newly elected council, within one year from taking office, but until this has been done, the delegations remain in place. All administrative actions allowed in terms of legislation and the municipality's system of delegations continues during the transition period, such as the implementation of the Supply Chain Management Policy and process.
- (c) The Municipal Manager should therefore, as soon as possible, prepare a process plan for the review of the system of delegations for submission to the first council meeting. He/She must also table the existing system of delegations for adoption as a temporary system of delegations, pending the review of the system of delegations, as contemplated in section 59(2)(f) of the Municipal Systems Act.

6.3 Development and Adoption of Integrated Development Plans (IDPs)

- (a) The Municipal Systems Act require municipalities to adopt an IDP which is a single, inclusive and strategic plan of a municipality that integrates planning and aligns the

resources and capacity of a municipality. In the main, the IDP integrates all sectoral plans to facilitate the achievement of integrated development in communities.

- (b) It is acknowledged that the LGE takes place 4 months after the commencement of the municipal financial year. This poses a latent challenge in so far as adherence to legislated timeframes with regard to the adoption of the 5-year IDP and its subsequent implementation.
- (c) Given the fact that the IDP and budget were reviewed and adopted by 30 June 2021, the current council had an obligation to ensure that these stipulations were complied with. In this regard, the current council was expected to continue the process of the review starting with the development and adoption of the process plan provided for in section 28 of the Municipal Systems Act.
- (d) Section 25(3) of the Municipal Systems Act allows the Municipal Council to adopt the IDP of the preceding council. However, should the incoming councils be unhappy with the priorities set out by the predecessor council, in this case, municipal councils are advised to consider the existing adopted IDP and resolve to initiate or not to initiate an amendment procedure as guided by the Municipal Systems Act, and the Local Government: Municipal Planning and Performance Management Regulations, 2001.
- (e) DCoG developed and rolled out the revised IDP guidelines to assist municipalities with the adoption of IDPs during an election year.

6.4 Establishment of Ward Committees

- (a) In terms of the Structures Amendment Act, local and metropolitan municipalities will have 120 days after the LGE and post the first council meetings to establish ward committees.
- (b) To ensure credibility, the election of ward committee members should be conducted with the assistance and / or in line with the prescripts of the IEC.
- (c) Should the establishment of ward committees not take place within the 120 days provision, the Speaker must, prior to the expiry of the 120 days, in writing request the MEC responsible for local government in the province, for an extension. The MEC must respond within 14 days of receipt of the request and provide detailed reasons for granting or refusing the extension.
- (d) Municipal Councils are responsible for the formulation of policies regarding the ward committee establishment processes, operations, and determination of payment of allowances/out-of-pocket expenses for ward committee members.

- (e) Provinces must develop and implement ward committee establishment plans and ensure that these committees are established within the legislated timeframe.
- (f) The election procedure should be based on:
 - **A sectoral model:** informed by municipal stakeholder databases of the sectors existing within each ward;
 - **A geographical model:** based on the voter district and geographic spread of the ward; or
 - **A hybrid model:** a combination of the sectoral and geographical models.
- (g) The election criteria applicable for electing ward committee members should be adhered as outlined in the Guidelines for the Establishment and Operation of Municipal Ward Committees, 2005.
- (h) Post the establishment of ward committees, provinces must support municipalities in the induction of newly elected ward committee members. The induction will form part of a broader capacity building programme to be rolled-out throughout the term of office.
- (i) Ward committees must develop operational plans which will be reviewed on an annual basis. The plans are aimed at ensuring that operations of ward committees are structured and provide an enabling platform to actively take part in the planning, implementation and monitoring of service delivery.

6.5 Non-returning Councillors

(a) Salaries, Benefits and Allowances

- (i) As indicated above³², no Councillor that has **not been elected to office** when the next council is declared elected, is entitled to receive any remuneration from the municipality. Failure to adhere to this principle will result in the municipality incurring irregular expenditure in terms of section 167(2) of the MFMA, and it is mandatory for such expenditure to be recovered from the Councillor concerned.
- (ii) Municipal Managers must make special arrangements to expeditiously pay non-returning Councillors for the number of days that they remained as Councillors during November 2021.

(b) Municipal-owned Property and Assets

³² See paragraph 4.8.

- (i) Municipal Managers must ensure that the administration has a full record of all municipal assets in the possession of or under the control of all Councillors, and that necessary arrangements are made to ensure that they recover from non-returning Councillors, any municipal assets in their possession. These municipal assets will include mayoral vehicles, cellphones, laptops, tablets and other computers, office equipment, etcetera.
- (ii) As far as possible, all assets that are taken into the custody of the municipality must then be re-allocated to the newly elected Councillors.

(c) Outstanding Debts

Should there be instances where Councillors still owe the municipality for rates and service charges, damage to municipal property and or salary overpayments, then Municipal Managers must make mutually acceptable arrangements to recover amounts owed by non-returning Councillors from the last salary amounts payable to such Councillors.

(d) Councillor Pension Benefits

- (i) Most Councillors are members of pension funds. Municipal Managers should assign an official from within the municipality's HR department to assist non-returning Councillors to claim their benefits from the respective pension fund.
- (ii) Municipal Managers should contact the Pension Fund Administrators to ensure that correct and up-to-date contributions and schedules have been submitted to the pension fund to avoid any delays in payment by the pension fund to non-returning Councillors. Where possible, municipalities should also assist retiring Councillors to get their tax affairs in order with the South African Revenue Service (SARS).

(e) Payment of Once-off Gratuity (OOG)

- (i) The main purpose of the OOG is to assist non-returning Councillors to adjust to circumstances as they no longer find themselves in office, and to assist them to meet already entered-into financial commitments.
- (ii) The OOG will be paid to eligible non-returning Councillors who were in office from 1 August 2021 onwards, and who would have served at least 24 continuous months in office. The payment will also be made on a pro-rata basis based on the service of the Councillor, and will be subject to taxation.

- (iii) The DCoG has issued a detailed circular³³ relating to the implementation and the rollout of these payments.

6.6 Integrated Councillor Induction Programme (ICIP)

- (a) SALGA, in collaboration with DCoG, National Treasury and the National School of Government, have developed an ICIP that will be rolled out during December 2021.
- (b) The programme is aimed at providing incoming Councillors with a broad overview of the municipal environment and will, inter alia, cover their roles and responsibilities; the policy and legal framework; and various municipal processes.
- (c) The topics to be covered will, amongst others, include Councillor oversight; good governance principles; delegations; roles and responsibilities; cooperative governance; standing rules of order; compliance with the Code of Conduct for Councillors; financial management; and strategic planning.

6.7 Code of Conduct for Councillors³⁴

- (a) As suggested above³⁵, a copy of the Code must be made available to all Councillors together with the information pack to be provided during the first council sitting. Strict adherence and compliance to the Code must be uppermost for all Councillors.
- (b) The Code has been migrated from Schedule 1 of the Municipal Systems Act and is included as Schedule 7 in the Municipal Structures Act. As provided in Item 2 of the Code³⁶, a Councillor must -
 - “(a) Perform the functions of office in good faith, honestly and in a transparent manner; and*
 - (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.”*
- (c) It must be further noted that in terms of Item 12 of the Code, a Councillor may not, except as provided by law, interfere in the management or administration of any department of the municipal council, unless mandated by the council.
- (d) Sections 117 and 118 of the MFMA provides that no Councillor may be a member of a municipal bid committee or any other committee evaluating or approving tenders,

³³ Circular 13 of 2021 is available on the website of DCoG at the following link: [06102021_DCoG-Circular-13-of-2021_Once-off-Gratuity.pdf \(cogta.gov.za\)](https://www.cogta.gov.za/06102021_DCoG-Circular-13-of-2021_Once-off-Gratuity.pdf)

³⁴ Hereinafter referred to as the “Code”.

³⁵ See paragraph 5.4.

³⁶ General Conduct of Councillors.

quotations, contracts or other bids, nor attend any such meeting as an observer and that no person may interfere with the SCM system of a municipality or municipal entity or amend or tamper with any tenders, quotations, contracts or bids. Failure to adhere to sections 117 and 118 will result in Councillors committing a financial offence in terms of section 173 of the MFMA, which is a criminal offence and is liable on conviction of such an offence to imprisonment for a period not exceeding five years, or to an appropriate fine determined in terms of applicable legislation.

- (e) All Councillors must familiarise themselves with the Code and be mindful of the new section 21A in the Structures Amendment Act, which provides as follows:

“A councillor who is removed from office by the MEC for local government in a province in terms of item 16(7)(b) of the Code of Conduct may not stand as a candidate in an election for any municipal council for a period of two years from the date on which such person was removed from office.”

- (f) DCoG, in collaboration with Provinces and SALGA, will be monitoring compliance in this regard. A short video to create awareness on the Code is also available on the website of DCoG³⁷.

6.8 Unfunded budget process and criteria for release of funding in December 2021

- (a) In terms of Section 18 of the MFMA, all municipalities must ensure that their budgets are based on realistically anticipated revenue to be collected and subsequently funded. Councils are reminded that all **unfunded budgets that are adopted will be treated as a transgression of this provision in the Act**. This point was further emphasised in the Budget Council³⁸ and Budget Forum³⁹. In addition, Cabinet resolved that no municipality will adopt an unfunded budget as it has financial ramifications during implementation of the budget. In many cases, unfunded budgets provide a false sense of financial security, and the result is almost always a financial crisis during the year.
- (b) National Treasury is fully aware that in some cases the municipalities will not be in a position to change the result to a funded one. Municipalities found in this situation are offered an opportunity to develop a funding plan to support the unfunded position. This plan must be adopted in council with an appropriate resolution. This funding plan will also be scrutinised by the respective provincial treasury for its credibility, before adoption. The progress against this plan will be strictly monitored to determine any gradual improvement or not.

³⁷ Video on the Code of Conduct for Councillors available at: www.cogta.gov.za.

³⁸ Established in terms of Section 2 of the Intergovernmental Fiscal Relations Act No. 97 of 1997 (hereinafter referred to as the “IGRFA”) and consists of the Minister of Finance and the MECs responsible for Finance.

³⁹ Established in terms of Section 5 of the IGRFA and consists of the Minister of Finance, MECs responsible for Finance, and representatives from organised local government.

- (c) Councillors must be aware that a council resolution was requested from municipalities that were in this position. The intention of the resolution was for the council to commit to addressing the unfunded position in the main adjustments budget process in February 2022. Failure to adhere to these conditions will result in National Treasury withholding the equitable share and other grant funding that are due to the municipality in December 2021. This action is aligned to Section 216(2) of the Constitution which mandates the National Treasury to enforce compliance and stop the transfer of funds due to a municipality for serious or persistent material breach.
- (d) Councils are therefore encouraged to ensure that future municipal budgets are funded before adoption to avoid any punitive measures being invoked on the municipality during their term in office.
- (e) Councils must also be aware that a decision has been taken to aggressively deal with municipalities with adverse or disclaimer audit opinions in the last audit cycle. Unless these municipalities can demonstrate reasonable and implementable steps to address this poor audit outcome, the relevant municipality will be subjected to the punitive measure of withholding their funds, until such has been adequately resolved. The withholding will be instituted immediately, effective in the December 2021 transfer window. Councils are once more advised to ensure adequate plans are in place to address this issue.
- (f) Councils should note that in terms of Section 65(2)(e) of the MFMA that all creditors payments are timeously honoured, especially the bulk suppliers such as Eskom, Water Boards and the Water Trading Entity of the Department of Water and Sanitation. Failure to honour these commitments will result in the institution imposing their credit control policy on the municipality which will lead to a restriction of the service or disconnection, as applicable. The non-payment could be regarded as a serious material breach and also handled under Section 216(2) of the Constitution.
- (g) Councils should be aware that on 25 August 2021 an email was issued to municipalities which listed criteria for the release of the second instalment of the equitable share for the 2021/22 municipal financial year. The correspondence served to inform municipalities that the second instalment of the Equitable Share for the 2021/22 municipal financial year is due to be released on 7 December 2021 [see Section 5(3) of the Division of Revenue Act]⁴⁰ will be subject to the criteria listed therein. This correspondence included the issues of unfunded budget, and the adverse and disclaimer opinion approaches mentioned above. Importantly, the new councils must be aware that the due date for adherence to the criteria is 12 November 2021.

⁴⁰ Division of Revenue Act, 2021 (Act No. 4 of 2021), as amended by Division of Revenue Amendment Act, 2021 (Act No. 9 of 2021).

6.9 Municipal Support and Intervention Plans (MSIPs)

- (a) On 30 June 2021, the Minister of COGTA tabled a report on the State of Local Government (SOLG) to Cabinet. The report was based on five Key Performance Areas, namely – Political; Governance; Administrative; Financial Management; and Service Delivery, and municipalities were categorised as follows: Dysfunctional; Medium to high Risk; Low Risk; and Stable.
- (b) Based on the SOLG report, Cabinet decided that MSIPs be developed for all 257 municipalities. The primary implementers of the MSIPs are municipalities and the Municipal Councils must play an oversight role to ensure that all identified challenges are dealt with.
- (c) Councillors must be aware that where a municipality meets the criteria and jurisdictional facts are present for a mandatory intervention, the PEC must invoke an intervention as contemplated in terms of the provisions of section 139(5) and/or (7) of the Constitution read together with Chapter 13 of the MFMA, irrespective of the implementation of the municipal support and intervention plans.
- (d) A Municipal Support and Interventions Framework has been developed to reinforce the need for inter-sphere collaboration and provide guidance on the implementation and monitoring and reporting of the MSIPs. The new term of Municipal Councils provides the ideal opportunity to reaffirm the following specific responsibilities assigned to all spheres of government for implementation of the MSIPs:

Local Municipalities	District Municipalities (and Metros)	Provinces	National
<ul style="list-style-type: none"> ▪ Institutionalise the MSIP by incrementally incorporating them into the 5-year IDPs post the LGEs to ensure that all challenges identified in the SOLG are implemented. ▪ Obtaining Council approval and ensuring regular reporting to Council on the 	<ul style="list-style-type: none"> ▪ Political and Technical District/Metro IGR Forums to coordinate reporting on MSIP implementation, including holding sectors accountable to implement support measures. ▪ Establishment and management of work streams (e.g. governance, finance, service delivery) to implement MSIPs. 	<ul style="list-style-type: none"> ▪ Provincial CoGTAs to coordinate active participation of Provincial Treasuries and relevant sector departments, including district Houses of Traditional Leadership, through DDM political and technical structures, to implement MSIPs. ▪ Ensure that all MSIPs are adopted by the Provincial Executive Councils. ▪ Provincial CoGTAs to coordinate and monitor implementation of MSIPs and submit quarterly 	<ul style="list-style-type: none"> ▪ CoGTA and National Treasury, in collaboration with provincial COGTAs and Treasuries, to mobilise support from sector departments for implementation of MSIPs. ▪ DDM National Champions will play a critical role to resolve political and service delivery challenges and unblock catalytic projects, where required.

Local Municipalities	District Municipalities (and Metros)	Provinces	National
<p>implementation of MSIP.</p> <ul style="list-style-type: none"> ▪ Ensuring that MSIP's is a standing item on Council agendas for monitoring and reporting purposes. ▪ Ensuring that progress on implementation of MSIPs are reported quarterly to Provincial CoGTAs. 	<ul style="list-style-type: none"> ▪ Ensure that all MSIPs are adopted by municipal councils. ▪ Critical to the implementation of MSIPs is the role of the DDM Champions with regard to oversight and monitoring. 	<p>progress reports to the provincial EXCO.</p> <ul style="list-style-type: none"> ▪ Provincial CoGTA and Treasury to submit quarterly progress reports to National CoGTA and National Treasury for analysis and consolidation. ▪ DDM Provincial Champions will play a critical role to resolve political and service delivery challenges and unblock catalytic projects. 	<ul style="list-style-type: none"> ▪ National CoGTA to analyse and consolidate quarterly provincial progress reports on MSIPs for purposes of reporting to IGR structures, such as MinMeC, PCC and Cabinet. ▪ Provincial quarterly progress reports must include progress from relevant provincial sector departments to implement MSIP interventions.

7. ENQUIRIES

Enquiries relating to the various matters dealt with in this circular may be directed to the persons mentioned in the below table:

Department of Cooperative Governance	National Treasury	South African Local Government Association
<p>Dr Kevin Naidoo</p> <p>Executive Manager: Municipal Governance</p> <p>Telephone: (012)3954616 E-mail: kevin@cogta.gov.za</p>	<p>Mr Jan Hattingh</p> <p>Chief Director: Local Government Budget Analysis</p> <p>Telephone: (012)3155111 E-mail: jan.hattingh@treasury.gov.za</p>	<p>Mr Lance Joel</p> <p>Chief of Operations</p> <p>Telephone: (012)3698000 E-mail: ljoel@salga.org.za</p>

8. CONCLUDING REMARKS

As the Directors-General of the DCoG and National Treasury, and the Chief Executive Officer of SALGA, we undertake to continue to support all provinces and municipalities to deliver on their mandates, and further request you to immediately report to us any matter that requires our attention. We urge all Provincial CoGTAs, Provincial Treasuries, Provincial SALGAs and Municipalities to continue to collaborate with each other and to ensure that you comply with all applicable policy and legislative instruments guiding the sector, and that quality services are delivered to all citizens.

Any incident of fraud, maladministration or corruption must be dealt with immediately and brought to the attention of the relevant authorities without delay. As we collectively usher in the 5th term of

Municipal Councils, every effort must be made on all fronts to ensure that governance is strengthened, and quality service delivery is upscaled.

We wish you well as preparations are finalised for the holding of the LGEs on 1 November 2021, and as you prepare for welcoming our new cohort of Councillors.

With kind regards,

MS A A WILLIAMSON	MR D MOGAJANE	MR X GEORGE
		
<p>DIRECTOR-GENERAL Department of Cooperative Governance</p>	<p>DIRECTOR-GENERAL National Treasury</p>	<p>CHIEF EXECUTIVE OFFICER South African Local Government Association</p>
<p>DATE: 15/10/21</p>	<p>DATE: 19/10/2021.</p>	<p>DATE: 15/10/21</p>