CIRCULAR NO. 29 of 2016

FROM: ACTING DIRECTOR-GENERAL
DEPARTMENT OF COOPERATIVE GOVERNANCE

TO ALL: HEADS OF DEPARTMENT RESPONSIBLE FOR LOCAL GOVERNMENT IN THE PROVINCES
MUNICIPAL MANAGERS

MANAGEMENT OF THE VARIOUS TRANSITION MEASURES:
PRE AND POST THE 2016 LOCAL GOVERNMENT ELECTIONS

1. BACKGROUND AND PURPOSE OF THE CIRCULAR

(i) It must be stated at the outset that the Back-to-Basics (“B2B”) Programme that was launched by the President of the Republic of South Africa on 18 September 2014 continues to be the flagship programme of government. The Ministry of Cooperative Governance and Traditional Affairs would therefore like to take this opportunity to affirm the five pillars that underpins the (B2B) Programme, which are as follows:

- Putting people first;
- Sound financial management;
- Good governance;
- Service delivery; and
- Building capable local government institutions.
You are therefore urged to continue to ensure that the work that we are all involved in embraces the abovementioned B2B pillars.

(ii) Pursuant to various engagements and discussions undertaken by the Ministry of Cooperative Governance and Traditional Affairs, it was directed that a circular be issued to support and advise provinces and municipalities with managing the various transition measures. This occurs as the third term of local government draws to a close and as preparations are made to usher in the next term of local government post the 3 August 2016 local government elections (LGE).

2. OVERVIEW OF THE CONTENTS OF THE CIRCULAR

This circular provides guidance with respect to the following matters:

2.1 MATTERS FOR CONSIDERATION PRIOR TO THE 2016 LGE

- Participation of staff members in the LGE;
- Non-returning councillors;
  - Salaries, benefits and allowances;
  - Municipal assets;
  - Outstanding debts owed by councillors; and
  - Councillor pension benefits;
- Appointment of senior managers in municipalities affected by the redetermination of municipal boundaries;
- Procurement-related matters;
- Preparation of hand-over reports;
- Preparations for the first council meeting:
  - Preparation of information packs; and
  - Capacity building for municipal managers.

2.2 MATTERS FOR CONSIDERATION POST THE 2016 LGE

- Integrated councillor induction programme;
- Code of Conduct for Councillors:
  - Disclosure of interests;
  - Personal gain; and
  - Declaration of interests;
- Integrated Councillor Induction Programme;
- Salaries, allowances and benefits for newly-elected councillors;
- Employment contracts;
- Political rights of municipal managers and managers directly accountable to municipal managers;
- Employment of dismissed staff;
- Extension and renewal of existing employment contracts of senior managers;
- Performance management;
- Management of discipline;
- Premature termination of contracts;
- Development of staff establishments;
- Establishment of ward committees;
- Cost containment measures;
- Offences and penalties;
- Once-off gratuity payment for eligible non-returning councillors;
- Reporting on the Municipal Demarcation Transition Grant (Provinces and affected Municipalities); and
- Back-to-Basics (Phase 2).

3. DISCUSSION: MATTERS FOR CONSIDERATION PRIOR TO THE 2016 LGE

3.1 PARTICIPATION OF STAFF MEMBERS IN THE LGE

(i) A staff member who is issued with a certificate in terms of section 31 (3) of the Electoral Act, 1998 (Act No. 73 of 1998), or section 15(3) or 18(1)(d) of the Local Government: Municipal Electoral Act, 2000 (Act No.27 of 2000), shall, on the working day following the day on which she or he receives the certificate, presents a copy of the certificate to the municipality and shall be deemed to be on annual leave from the working day contemplated until the date on which the result of the election is declared.

(ii) A staff member who has been elected as a member of the municipal council shall be deemed to have resigned from the municipality concerned with effect from the date immediately before the date she or he assumes office. A staff member is prohibited from utilising any immovable and movable property of the municipality for the purpose of promoting her or his election campaign.

3.2 NON-RETURNING COUNCILLORS

(i) Salaries, benefits and allowances

Section 26 of the Municipal Structures Act provides that a person is elected as a councillor for a period ending when the next council is declared elected. It follows, therefore, that no councillor is entitled to receive any further remuneration beyond the date when the next council is declared elected (that is, the date on which the results for each of the municipal councils are officially declared by the Independent Electoral Commission in the Government Gazette).

Municipal managers must make special arrangements to expeditiously pay councillors who do not return to office, for the number of days in the month that they remained as councillors.

Newly elected and re-elected councillors will receive their remuneration in accordance with the positions held in the new municipal councils from the date on which the results for each of the municipal councils are officially declared by the IEC, including the number of days in the month that they remain as councillors.
(ii) **Municipal assets**

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, cell-phones, laptops and other computers, office equipment, etcetera.

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.

(iii) **Outstanding debts owed by councillors**

Notwithstanding the provisions of the Municipal Finance Management Act, ("MFMA") there may still be councillors who owe the municipality money. In this regard, it is recommended that municipal managers fulfil their responsibilities in terms of the MFMA by making arrangements to recover amounts owed by non-returning councillors, if possible and by agreement, from the last salary amounts payable to such councillors.

(iv) **Councillor pension benefits**

Most councillors are members of the Municipal Councillors Pension Fund ("MCPF"). Municipal managers should assign an official from within the municipality's HR department to assist non-returning councillors to claim their benefits from the MCPF.

Municipal managers should contact the MCPF Administrators to ensure that correct and up to date contributions and schedules have been submitted to the MCPF in order to avoid any delays in payment by the MCPF 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").

Satellite offices of the MCPF are being established in each of the SALGA provincial offices for a period of 6 months from June 2016, to assist non-returning councillors to process their benefits.

3.3 **APPOINTMENT OF SENIOR MANAGERS IN MUNICIPALITIES AFFECTED BY THE REDETERMINATION OF MUNICIPAL BOUNDARIES**

In the event that the position of municipal manager, or one or more of the post/s of senior manager/s in a splitting or merging municipality becomes vacant at any time prior to the LGE -
(i) the splitting or merging municipality concerned may, with the prior written authority of the MEC, and subject to such terms and conditions as the MEC may deem fit, notwithstanding the provisions of any other law, appoint an acting municipal manager or acting senior manager or managers, as the case may be, for a period terminating within three months after the date of the LGE; and

(ii) the MEC must, in authorising an acting appointment, specify an acting allowance to be paid by the splitting municipality or merging municipality, to the acting municipal manager or acting senior manager.

3.4 PROCUREMENT-RELATED MATTERS

(i) Municipalities are urged to refrain from entering into any large scale procurement of especially assets and immovable property, but to rather defer such procurement to the incoming council after the LGE.

3.5 PREPARATION OF HAND-OVER REPORTS

(i) Each municipal manager, working together with the Chief Financial Officer and 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.

(ii) It is proposed that the hand-over report should include:

- An overview of the demographic and socio-economic characteristics of the municipality;
- An overview of the organisational structure of the municipality, with the names and numbers of senior managers;
- An overview of key municipal policies that councillors need to be aware of, and where they can obtain the full text of such policies;
- An overview of issues that still need to be addressed in relation to the municipality’s turnaround strategy;
- 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;
  - 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.
The municipality’s audit outcomes for the past three financial year, and its strategy to address audit issues / shortcomings;

An overview of the provision of basic services, including plans to address backlogs;

An overview of the state of the municipality’s assets, with particular reference to the asset management plan, and repairs and maintenance requirements;

A list of the main infrastructure projects planned for the 2016/17 budget and Medium Term Revenue and Expenditure Framework (MTREF);

A list of key processes requiring council input over the next six months, e.g. revision of the Integrated Development Plan (IDP), approval of specific policies etcetera; and

Any other information deemed to be important.

(iii) In addition to the hand-over report, each new councillor should be given the municipalities’ revised IDP, the adopted 2016 / 2017 budget, the mid-year budget and performance assessment report for 2015 / 2016, and the latest monthly financial statement, and the annual report for 2014 / 2015.

(iv) Municipal managers should submit their municipality’s hand-over report to the relevant provincial department responsible for local government, to the Department of Cooperative Governance and to the National Treasury.

3.6 PREPARATIONS FOR THE FIRST COUNCIL MEETING

(i) Preparation of information packs

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:

- Handover report (see paragraph 3.5 above);
- IDP for the 2016 / 2017 financial year;
- Mid-year budget and performance assessment report the 2015 / 2016 financial year;
- Latest monthly financial statement;
- Annual report for the 2014 / 2015 financial year;
- Draft annual report for the 2015 / 2016 financial year;
- Government Gazette No. 39548 of 21 December 2015: Upper limits for the remuneration of councillors;
- Rules of order;
- Local government legislation (including the Code of Conduct for councillors);
- Documentation for the integrated councillor induction programme; and
- Copy of this circular.
(ii) Capacity building for municipal managers

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 (post the previously held general municipal elections), provinces are urged to convene provincial workshops to ensure that such persons are adequately capacitated to manage the first meeting of the council.

The proposed workshops could be held prior to the holding of the LGE. Officials from the Independent Electoral Commission should be invited to these workshops.

4. DISCUSSION: MATTERS FOR CONSIDERATION POST THE 2016 LGE

4.1 INTEGRATED COUNCILLOR INDUCTION PROGRAMME

(i) SALGA, in collaboration with various stakeholders, including the DCoG and the National Treasury, have developed an Integrated Councillor Induction Programme for all councillors, which will be rolled out within two months of the election.

(ii) The programme is aimed at providing councillors with a brief overview of the local government environment and will, inter alia, cover their roles and responsibilities, the policy and legal framework and various municipal processes.

(iii) The topics to be covered will, amongst others, include councillor oversight, good governance principles, delegations, roles and responsibilities, cooperative governance, standing rules of order, the code of conduct, financial management and strategic planning.

4.2 CODE OF CONDUCT FOR COUNCILLORS

Drawing from the Code of Conduct for Councillors (Schedule 1 of the Municipal Systems Act ["MSA"]), the following specific extracts from the Code are cited for strict compliance and monitoring thereof:

(i) General conduct of councillors

Item 2:

“A councillor must -

(a) perform the functions of office in good faith, honestly and 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.”
(ii) Disclosure of interests

Item 5:

“(1) A councillor must -

(a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and

(b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.

(2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.

(3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.”

(iii) Personal gain

Item 6:

“(1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.”

(4) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.”

(iv) Declaration of interests

Item 7:

“(1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:
(a) shares and securities in any company;
(b) membership of any close corporation;
(c) interest in any trust;
(d) directorships;
(e) partnerships;
(f) other financial interests in any business undertaking;
(g) employment and remuneration;
(h) interest in property;
(i) pension; and
(j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

(v) Municipalities are urged to ensure that all councillors receive a copy of the Code of Conduct and to sign a copy thereof and provide same to the municipality for safe and record-keeping.

4.3 SALARIES, ALLOWANCES AND BENEFITS FOR NEWLY ELECTED COUNCILLORS

(i) As indicated in paragraph 3.6(i) above, councillors must be presented with a copy of the presently applicable Notice setting out the upper limits of councillor remuneration (Government Gazette No. 39548).

(ii) Refer to paragraph 3.2 above for remuneration that will be paid to returning and newly elected councillors.

4.4 APPOINTMENT OF MUNICIPAL MANAGERS AND MANAGERS DIRECTLY ACCOUNTABLE TO MUNICIPAL MANAGERS (SENIOR MANAGERS)

Municipal Managers and Acting Municipal Managers

(i) Section 57 of the MSA provides that the employment contract of a municipal manager must be for a fixed term of employment, not extending a period ending one year after the election of the next council of the municipality.

(ii) Considering the forthcoming LGE and the fact that it may be difficult for municipalities to attract competent and suitable municipal managers, a moratorium
should be imposed on the filling of municipal manager posts until after new councils have been declared elected, following which, a competitive process to fill such posts may be embarked upon.

(iii) In order to enable the municipalities to meet their operational requirements, the appointment of acting municipal managers may be explored. If a municipality is not able to appoint an acting municipal manager for any reason, such a municipality may invoke the relevant provisions in the MSA and its related Regulations to second a suitable person, provided that the appointee meets the minimum prescribed skills, expertise, competencies, experience and qualifications.

Managers directly accountable to municipal managers

(iv) If the post of a manager directly accountable to the municipal manager becomes vacant post the LGE, the municipality must advertise the post in accordance with Chapter 3 of the Regulations. As a principle, a once-off acting appointment may be considered for a period not exceeding three (3) months to enable the municipality to conclude its recruitment and selection processes.

(v) Municipal councils may, in exceptional circumstances and on good cause shown, apply in writing to the MEC for an extension of the three (3) months period of an acting appointment for a further period not exceeding three (3) months.

4.5 EMPLOYMENT CONTRACTS

(i) The appointment of a person as a senior manager and any contract of employment entered into between the municipality and the person appointed as a senior manager is null and void, if the appointee does not meet the prescribed skills, expertise, competences and qualifications or the appointment was made in contravention of the MSA.

(ii) The municipal council must, within 14 days of appointment, inform the MEC responsible for local government of the appointment process and outcome. If a municipal council has made an appointment in contravention of the MSA, Sections 54A and 56 of the MSA empowers the MEC to take appropriate steps to enforce compliance by the municipalities, which steps may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipality.

4.6 POLITICAL RIGHTS OF MUNICIPAL MANAGERS AND MANAGERS DIRECTLY ACCOUNTABLE TO MUNICIPAL MANAGERS

(i) The MSA prohibits municipal managers and managers directly accountable to municipal managers from holding political office in a political party, whether it is on a permanent, temporary or acting capacity. The MSA defines political office in relation to a political party as the position of:
Chairperson;
Deputy chairperson;
Secretary;
Deputy secretary; or
Treasurer,
of a party nationally, or in any province, region or other area in which the party operates, or any position equivalent to the positions referred to, irrespective of the title thereof.

(ii) However, the limitation of this right does not affect the right of municipal managers and managers directly accountable to municipal managers to freedom of association.

4.7 EMPLOYMENT OF DISMISSED STAFF

(i) A staff member dismissed for serious misconduct contemplated in section 57A of the MSA and Item 18 of the Regulations may not be re-employed in any municipality before the expiry of a period, as set out in Schedule 2 of the Regulations.

(ii) Any appointment made in contravention of this regulation is null and void.

4.8 EXTENSION AND RENEWAL OF EXISTING EMPLOYMENT CONTRACTS OF SENIOR MANAGERS

(i) In terms of section 57 of the MSA, all fixed-term contracts of municipal managers entered into between 2011 and 3 August 2016 will terminate on the termination date through effluxion of time, unless terminated earlier or extended for a period not exceeding one year after the LGE.

(ii) In terms of Regulation 4(3) of the Local Government: Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers, 2006, no expectation must be created that the employment contract will be renewed or extended beyond its fixed term.

(iii) If the municipal council opts to extend the application of the repealed subsection 57(6) in so far as it relates to managers directly accountable to municipal managers, no expectation should be created that the employment contract will be renewed or extended beyond its fixed term.

(iv) In cases where the employment contract provides for the terms of renewal, municipal councils may renew the contract only:

- If the renewal is concluded prior to the termination of the employment contract;
- By resolution of the new council (after the LGE);
- If the terms and conditions of the renewal of a contract, as stipulated in the employment contract, have been complied with;
- If the senior manager concerned meets the prescribed skills, expertise, competencies and qualifications; and
- If the performance assessments results for the senior manager concerned demonstrates that the performance of the senior manager has achieved an overall rating of outstanding or at least significantly above expectations during his or her tenure of office.

**NOTE:** The resolution of council and the performance assessment report must be submitted together with necessary documents to the MEC for assessment, in terms of section 54A(7)(a) and 56(4A)(a) of the MSA.

(v) If the aforestated conditions do not apply to an existing contract of a senior manager upon expiry of the employment contract, then due processes must followed by the municipality to fill the vacant post.

### 4.9 PERFORMANCE MANAGEMENT

(i) The MSA makes its mandatory that an employment contract must be signed by all parties, before commencement of service. Serving municipal managers and managers directly accountable to municipal managers when the 2011 amendments to the MSA came into effect, must conclude a performance agreement within thirty (30) days from the commencement of the financial year of a municipality.

(ii) A municipal manager or manager directly accountable to the municipal manager, appointed after 3 August 2016 must conclude a performance agreement within sixty (60) days after appointment.

(iii) Failure to conclude a performance agreement within the stipulated timeframe is a breach of contract and the appointment lapses: Provided that upon good cause shown to the satisfaction of the municipality, the appointment shall not lapse.

### 4.10 MANAGEMENT OF DISCIPLINE

(i) Any allegation of misconduct against a staff member must be brought to the attention of the relevant authority. If the relevant authority is satisfied that there is a reasonable cause to believe that an act of misconduct has been committed by the staff member, the relevant authority must invoke the provisions of the applicable disciplinary procedures. No staff member may be suspended / placed on “special leave”, or dismissed, without following the proper disciplinary procedures.

(ii) Municipalities must also maintain a detailed record of staff members dismissed for misconduct, and staff members who resigned prior to the finalisation of any disciplinary proceedings. This record must be submitted within 14 days of such dismissal or resignation to the MEC for local government and to the Minister.
4.11 PREMATURE TERMINATION OF CONTRACTS

(i) Experience has shown that during this period of transition, many municipalities enter into settlement agreements (“golden handshakes”) with senior managers for reasons that are normally not based on any legal basis. This practice is strongly discouraged and municipalities are urged to ensure that any termination of a contract of a senior manager (or any employee, for that matter) must be based on legal grounds.

(ii) Focus must always be on investing resources to improve service delivery, rather than be engaged in defending arbitration cases with huge and unjustified payouts to these employees.

4.12 DEVELOPMENT OF STAFF ESTABLISHMENTS

(i) Item 4(3) of the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers, 2014 (“the Regulations”) requires the municipal manager to review the municipality’s staff establishment within 12 months in any of the following instances:

- The election of a new council;
- The adoption of the IDP;
- Material changes to the functions of the municipality; and
- The determination of new municipal boundaries.

(ii) The revised staff establishment must be approved by a majority of the municipal council. No person may be employed by a municipality unless the post in which such a person is to be appointed has been provided for in the staff establishment of the municipality and budgeted for.

4.13 ESTABLISHMENT OF WARD COMMITTEES

(i) Ward committees in all metropolitan and local municipalities must be established within ninety (90) days after the first municipal council sitting. To ensure credibility, the election of ward committee members should be conducted with the assistance and / or within the prescripts of the Independent Electoral Commission (IEC).

(ii) The election procedure should be based on:

- A sectoral model (informed by municipal stakeholder databases of the sectors existing within each ward); or
- A geographic model based on the voter district and geographic spread of the ward. Election criteria applicable for electing ward committee members should be adhered to in terms of the “Guidelines for the establishment and operation of ward committees (2005)” and the “Compliance Framework on the guidelines for the establishment, operations and effective functionality of ward committees”.
(iii) The following process flow for the elections of credible ward committees must be adhered-to:

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>TIMEFRAME</th>
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<tbody>
<tr>
<td>Adoption of municipal public participation and ward committees establishment policies</td>
<td>August - September 2016</td>
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<tr>
<td>Awareness campaign / outreach on ward committee elections (to encourage participation of communities in the election process)</td>
<td>September - October 2016</td>
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<tr>
<td>Ward committee elections</td>
<td>September - November 2016</td>
</tr>
<tr>
<td>Induction programme for newly elected ward committee members (Induction forms part of a broader capacity building programme to be rolled-out throughout the term of office)</td>
<td>October - March 2017</td>
</tr>
<tr>
<td>Know your ward councillor/ward committee campaign / outreach</td>
<td>January - March 2017</td>
</tr>
<tr>
<td>Develop ward committee operational plans / service improvement plans that provide for a set of activities to be performed by ward committees</td>
<td>January - June 2017</td>
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4.14 COST CONTAINMENT MEASURES

(i) In the 2016 State of the Nation Address by the President, the cost containment measures announced by the Minister of Finance in 2013 were re-emphasised. It was highlighted that excessive and wasteful expenditure has been reduced, but there is still more to be done to cut wastage. In addition, the President announced new measures which include, amongst others:

- Curtailment of overseas trips and the submission of strong motivations by those requesting permission to travel i.e. the benefit to the country needs to be proved; and
- Institution of further restrictions on conferences, catering, entertainment and social functions.

(ii) The Minister of Finance announced further measures in his budget speech on 24 February 2016. The Mayors of municipalities were urged to join in eliminating wasteful expenditure in government. The advice provided in MFMA Budget Circular (No. 58, 66, 70, 72, 74 and 75) on cost containment measures and elimination of non-priority spending is still applicable to municipalities.

(iii) MFMA Circular 82 that was issued on 30 March 2016 specifically provides for cost containment measures. It emphasises that Section 62(1)(a) of the MFMA provides that the accounting officer of a municipality is responsible for managing the financial administration of a municipality, and must for this purpose take all reasonable steps
to ensure that the resources of the municipality are used effectively, efficiently and economically.

(iv) In terms of the legal framework, the elected councils and accounting officers are required to institute appropriate measures to ensure that the limited resources and public funds are appropriately utilized to ensure that value for money is achieved.

(v) The purpose of MFMA Circular 82 is to therefore, guide municipalities and municipal entities on cost containment measures that must be implemented in an effort to address the impact of the country’s economic challenges and to promote growth, address unemployment and equality, amongst others.

(vi) Municipalities are requested to table their policy / plan on cost containment measures in council for adoption, and to submit evidence of the tabling and copies thereof to the National and respective Provincial Treasuries, as well as to their relevant Provincial Department of CoGTA / CoGHSTA and to DCoG – this must be done within three (3) months of municipal councils having been declared elected.

4.15 OFFENCES AND PENALTIES

(i) Section 119 of the MSA states as follows:

“(1) A councillor who attempts to influence the municipal manager or any other staff member or an agent of a municipality not to enforce an obligation in terms of this Act, any other applicable legislation or any by-law or a decision of the council of the municipality, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

(2) A municipal manager or other staff member of a municipality who accedes to an attempt mentioned in subsection (1), is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

(3) A person who contravenes section 101 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(4) A person convicted of an offence and sentenced to more than 12 month's imprisonment without the option of a fine, is disqualified to remain a councillor of the municipality concerned and to become a councillor of any municipality during a period of five years as from the conviction.”

(ii) For ease of reference, Section 101 of the MSA (as mentioned above) deals with the "Municipality's right of access to premises" and states as follows:

“The occupier of premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable hours to the
premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service."

(iii) Attention is further drawn to Section 32 of the MFMA which specifically deals with unauthorized, irregular or fruitless and wasteful expenditure. Accounting officers are urged to familiarize themselves with this provision.

(iv) Further, Section 176(2) of the Municipal Finance Management Act (MFMA) states that:

“(2) Without limiting liability in terms of the common law or other legislation, a municipality may recover from a political office-bearer or official of the municipality, and a municipal entity may recover from a director or official of the entity, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office.

(v) Provinces are urged to monitor the implementation of Section 109 of the MSA, and Sections 32 and 176(2) of the MFMA, and to provide the DCoG with quarterly reports in this regard.

4.16 ONCE-OFF GRATUITY PAYMENT FOR ELIGIBLE NON-RETURNING COUNCILLORS

(i) An amount of R309 million has been availed to the DCoG to pay a once-off gratuity to certain councillors that will comply with specific criteria. In preparation for making these payments, discussions were held with the following key stakeholders:

- Auditor-General;
- Independent Commission for the Remuneration of Public Office Bearers;
- National Treasury;
- Provinces;
- SALGA; and
- SARS.

(ii) Payments will be made by the DCoG directly to the eligible councillors. All non-returning councillors must therefore provide the following information to their respective municipalities (payroll section):

- Name, surname, identity number;
- Tax number; and
- Date of commencement as councillor and date of vacating office.

(iii) As is the case with all other ex gratia payments, the gratuity will first be subjected to taxation, in accordance with the normal tax rules that are issued by the South African Revenue Service (SARS).
(iv) Councillors eligible for the gratuity must ensure that their tax affairs are in order so as not to delay any payment that may be due to such councillors.

(v) The DCoG will shortly issue a circular in this regard to collect the relevant data.

(vi) To expedite the payment process, provinces must collaborate with their respective municipalities and provide a consolidated list of persons that will be coordinating this process at both the provincial and the individual municipalities.

The following information must be submitted by each of the provinces to Dr Kevin Naidoo from the DCoG (see further details at the end of this circular):

- Name of Province;
- Name of Municipality;
- Details of person/s at the province and municipality;
  - Name and surname;
  - Landline and cellular phone numbers;
  - Email address.

4.17 REPORTING ON THE MUNICIPAL DEMARCATION TRANSITION GRANT (PROVINCES AND AFFECTED MUNICIPALITIES)

(i) To support the newly determined municipalities and ensure a smooth transition, the Municipal Demarcation Transition Grant (MDTG) was established in 2015 / 2016 for the Medium Term Expenditure Framework (MTEF), ending in the 2017/2018 financial year.

(ii) Transfers are made in accordance with a payment schedule approved by the National Treasury and gazetted in the Division of Revenue Act ("DoRA").

(iii) Affected provinces and municipalities have the following responsibilities:

**Responsibilities of provincial departments responsible for local government:**

- Fulfil all responsibilities in terms of section 14 of the Municipal Structures Act;
- Monitor and coordinate the resources allocated to municipalities, provinces and national government to ensure that there are no duplications and that the grant is only used for additional costs resulting from boundary changes;
- Assist the national department to assess municipalities’ business plans;
- Assist affected municipalities to jointly plan and manage the process through the CMTC;
- Assist the national department to coordinate reporting from municipalities; and
- Appoint a transformation manager (funded from the province’s own budget).
Responsibilities of municipalities:

- CMTCs must submit draft business plans by 29 April 2016 in the format prescribed by DCoG;
- Municipalities must submit final business plans within 30 days after the 2016 elections;
- Report to the national and relevant provincial department on a monthly basis on financial performance and on a quarterly basis against the performance targets set out in the business plan; and
- Participate in transitional structures.

(iv) Affected provinces and municipalities must ensure that there is strict compliance with the DoRA and that the required quarterly and monthly reports are timeously submitted to the DCoG for onward submission to the National Treasury.

4.18 BACK-TO BASICS (2ND PHASE)

(i) The sector has completed the first year cycle of the B2B Programme, since the launch of the Programme during September 2014. The Department of Cooperative Governance has compiled the 1st year report on the implementation of the B2B Programme which, inter alia, recognises that over 250 municipalities have reported at least once on the implementation of the B2B Programme, based on the new monthly municipal reporting system.

(ii) The new term of local government provides an opportunity to reconfirm and recommit to the B2B objectives and develop a 5-year B2B Programme with annual targets that will culminate into the second anniversary and the 3rd Presidential Local Government Summit, to shape the roll out of the second phase of the B2B Programme.

(iii) Some key government activities that will inform the second phase of the B2B Programme includes the following:

- An assessment of the status quo of each municipal council, aimed at identifying any outstanding or remaining challenges;
- Based on the above status quo assessment, review existing B2B Municipal Action Plans to reflect priority issues/ interventions with annual targets and key deliverables, linked to the B2B Ten Point Plan and based on the five B2B Pillars, to turn around performance of municipalities.
- The processes to review the B2B Municipal Action Plans should be supported by the Offices of the Premiers and Provincial CoGTA / CoGHSTA Departments and ensure alignment to the Local Government Manifesto priorities;
- Identification of key sector contributions required to support the implementation of focused B2B Municipal Action Plans;
5. **ENQUIRIES**

Further enquiries relating to this matter may be obtained from the following officials in the DCoG:

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Within the context of the pillars underpinning the B2B Programme all stakeholders “must hit the road running” in order to make a tangible difference in all our communities.

We wish you well as preparations are finalised for the holding of the next LGE on 3 August 2016 and as you prepare for the commencement of the fourth term of local government.

With kind regards,

[Signature]

**MR MUTTHOTHO SIGIDI**  
ACTING DIRECTOR-GENERAL

**DATE: 22.07.2016**