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PARLIAMENT OF ZIMBABWE

Publication of Bills

THE following Bills are published with this *Gazette* in terms of Standing Order No. 134(1) of the National Assembly.

Public Finance Management Amendment Bill, 2021 (H.B. 4, 2021).

Provincial Councils and Administration Amendment Bill, 2021 (H.B. 5, 2021).

CONTENTS

<i>Number</i>	<i>General Notice</i>	<i>Page</i>
610A.	Parliament of Zimbabwe: Publication of Bills	509

PUBLIC FINANCE MANAGEMENT AMENDMENT BILL, 2021

MEMORANDUM

The purpose of this Bill is to amend the Public Finance Management Act [*Chapter 22:19*] so as to align it with the provisions of the Constitution of Zimbabwe, *inter alia*, in the following respects:

Clause 1

This clause cites the title to the Bill as the Public Finance Management Amendment Bill, 2021.

Clause 2

New definitions of “assets”, “grant”, “liabilities”, “public property”, “Treasury memorandum” and “virement” will be inserted in the principal Act by this clause. The definition of Auditor-General will be amended so as to refer to the current name of the office under the Constitution of Zimbabwe and to cross-refer to the correct section in the Constitution. The definition of “financial statements” will be replaced by a wider definition.

Clause 3

This clause will provide for a new provision on the objects of the principal Act.

Clause 4

Clause 4 will amend section 4(1) of the principal Act so as to provide for provincial and metropolitan councils and local authorities.

Clause 5

A new Part IIA will be inserted in the principal Act which will provide for Parliamentary oversight of State revenues and expenditure. A new clause 5A will provide for Parliament to monitor and oversee public finances, while the new clause 5B will state the responsibilities of a Parliamentary Committee on budgets and a new clause 5C will provide for the responsibilities of the Public Accounts Committee.

Clause 6

This clause will insert a new subsection (3a) in section 6 of the principal Act which will require the written instructions issued by the Accounting Officer to be approved by Treasury and to be submitted to the Auditor-General.

Clause 7

Clause 7 will repeal paragraph (b) of section 7(1) of the principal Act and will substitute new paragraphs (b) and (c). The new paragraph (b) will state the Minister of Finance’s duty as advising the government on the allocation of public resources between ministries, public entities, etc., while the new paragraph (c) will require the Minister to provide guidance on measures to be adopted by Government to ensure the balanced allocation of resources.

Clause 8

A new section 10A will be inserted in the principal Act which will provide for the office of a Director responsible for finance in each Ministry.

Clause 9

This clause will replace section 12(8) so as to provide for appeals to be lodged with the appropriate Minister and for appeals to be submitted to the Auditor-General for comments.

Clause 10

Clause 10 will insert new sections 12A, 12B and 12C into the principal Act. The new section 12A sets out the duties of custodians of public funds and public property. The management of State assets is provided for in the new section 12B. The new section 12C will provide for Treasury to impose a surcharge on any person who has the responsibility of collecting moneys where such moneys are found to be deficient, or where there is a loss of public moneys, etc.

Clause 11

Section 16 of the principal Act will be repealed and substituted by this clause. The new clause will require all revenues to be paid into the Exchequer Account.

Clause 12

This clause will repeal and replace section 17 of the principal Act and will provide for the control of expenditure from the Consolidated Revenue Fund.

Clause 13

Clause 13 will insert new sections 17A and 17B into the principal Act. The new section 17A will require costs and expenses to be direct charges against the Consolidated Revenue Fund. Grants of credit will be charged against the Consolidated Revenue Fund in terms of the new section 17B.

Clause 14

Clause 14 will make provision for the appointment of management committees by an accounting officer under the new section 18(12).

Clause 15

This clause will amend section 19 of the principal Act by deleting the reference to “House of Assembly” and substituting it with “National Assembly” in accordance with the Constitution and by substituting the correct cross-reference to the particular section of the Constitution.

Clause 16

Section 22 of the principal Act will be repealed by this clause and replaced with a provision which provides for Treasury to establish banking accounts with the Reserve Bank or an authorised financial institution.

Clause 17

This clause will amend section 24 of the principal Act so as to provide for issues authorised to be included in additional or supplementary estimates of expenditure.

Clause 18

Clause 18 will substitute section 27(1), which will provide for the President to authorise the issue of money from the Consolidated Revenue Fund, during the dissolution of Parliament, so as to carry on the services of Government.

Clause 19

A new section 27A will be inserted into the principal Act by this clause. The new section 27A will provide for the preparation of estimates of revenue and expenditure.

Clause 20

This clause will amend section 28(2) and (3) by deleting “House of Assembly” and substituting “National Assembly” so as to correctly refer to the chambers as cited in the Constitution. Section 28(4) as amended will require the Minister of Finance to submit separate estimates of revenue and expenditure for each Commission, the office of the Auditor-General, etc.

Clause 21

Clause 21 will insert new sections 28A, 28B and 28C. The new section 28A will make provision for the management of budgets and the new section 28B will provide for the management of cash. Additional and supplementary estimates will be provided for in the new section 28C.

Clause 22

A new section 29A, which provides for Virementing, will be provided for by this clause.

Clause 23

Section 31(1) of the principal Act will be substituted in terms of this clause and will provide for the expiry of provisions which have been made in an Appropriation Act and which have not been expended in the particular financial year, at the end of that financial year.

Clause 24

This clause will insert a new section 31A in Part IV of the principal Act which will provide for the details relating to financial reporting.

Clause 25

Clause 25 will substitute section 32(1) which will require directors responsible for finance to prepare or cause to be prepared, the annual financial statements of the particular Ministry and to submit the statements to the accounting officer.

Clause 26

Clause 26 will repeal and replace section 35 of the principal Act. The new section 35 will require accounting officers to keep proper records of accounts, and to submit statements to the Auditor-General and Accountant-General within 30 days after the end of the financial year. The Accountant-General will be required to prepare financial statements on the Consolidated Revenue Fund and to submit the statements to the Auditor-General.

Clause 27

Under this clause a new section 36A will be inserted into the principal Act. This new provision will require the accounting officer of a constitutional entity or public entity to submit annual reports and financial statements to the National Assembly, the Minister of Finance, the appropriate Minister, the Accountant-General and the Auditor-General.

Clause 28

This clause will replace section 37 of the principal Act, which will provide for financial statements to comply with the generally accepted accounting practices as approved by the Accountant-General.

Clause 29

Clause 31 will substitute section 81 of the principal Act and provide for external auditors. The clause will provide for the procedure to be followed by the Auditor-General in cases where he or she believes that there are irregularities in the management of public moneys.

Clause 30

Section 83 of the principal Act will be repealed and replaced by this clause. The new section 83 will require the Auditor-General or any independent auditor to audit financial statements and the provision sets out the details required to be mentioned in the audit.

Clause 31

A new section 84 will be inserted in the principal Act under this clause. The new section 84 will provide for audit committees to be established in Ministries, statutory funds, constitutional entities, etc. The responsibilities of audit committees are detailed in the provision.

Clause 32

This clause will amend section 90(1) so as to provide for the deposit of unclaimed moneys in any bank account of a Ministry, constitutional entity, etc., with the Treasury.

Clause 33

Clause 33 will insert new sections 90A and 90B. The new section 90A will provide for retention moneys and the new section 90B will provide for the recovery of debts due to the State.

Clause 34

This will insert a new clause which would provide for transitional financial provisions of the Provincial and Metropolitan Councils.

BILL

To amend the Public Finance Management Act [*Chapter 22:19*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

5 **1 Short title**

This Act may be cited as the Public Finance Management Amendment Act, 2021.

2 Amendment of section 2 of Cap. 22:19

Section 2 (“Interpretation”) of the principal Act is amended—

(a) by the insertion of the following definitions—

10 “assets” means resources controlled by an entity as a result of past events
 and from which future economic benefits or service potential are
 expected to flow to the entity;

 “Auditor-General” means the person appointed as such in terms of section
 310 of the Constitution;

15 “financial assets” include deposits, cheques, loans, accounts receivable
 and marketable securities including bonds, notes and shares;

 “grant” means—

(a) an amount of money that is given by a government to a public
 entity to be used for a particular purpose; or

H.B. 4, 2021.]

- (b) an amount of money designated as such by the Appropriation Law.
- “liabilities” means present obligations of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits or service potential; 5
- “public funds” includes any money owned or held by the State or any institution or agency of government, including provincial and local tiers of government, statutory bodies and government-controlled entities; 10
- “public property” means any property owned or held by the State or any institution or agency of government, including provincial and local tiers of government, statutory bodies and government-controlled entities;
- “Treasury memorandum” means an action report by the Minister detailing the actions taken on the recommendations of Parliament arising out of the report of the Auditor-General; 15
- “virement” means the application, as authorised by an Appropriation Act, of savings on a subhead of a vote to meet excess expenditure on another subhead or expenditure on a new subhead of the same vote; 20
- (b) by the repeal of the definition of “financial statements” and the substitution of—
- “financial statements” in relation to—
- (a) the State finances of Zimbabwe means— 25
- (i) a statement of cash receipts and payments;
 - (ii) accounting policies and explanatory notes;
 - (iii) where an entity makes publicly available its approved budget, a comparison of budget and actual amounts either as a separate additional financial statement or as a budget column in the statement of cash receipts and payments; and 30
 - (iv) other reports that the Accountant-General may require;
- (b) a public entity or statutory fund or a fund established by or in terms of this Act, means— 35
- (i) a statement of financial position;
 - (ii) a statement of comprehensive income;
 - (iii) a statement of cash-flow;
 - (iv) audited or unaudited monthly, quarterly or annual financial accounts; 40
 - (v) any other statements that may be prescribed;
- (c) a fund established by or in terms of this Act—
- (i) a statement of financial position;
 - (ii) a statement of financial performance;
 - (iii) a statement of changes in net assets or equity; 45
 - (iv) a statement of cash-flow;

- (v) where an entity makes publicly available its approved budget, a comparison of budget and actual amounts either as a separate additional financial statement or as a budget column in the financial statement; and
- 5 (vi) notes, comprising a summary of significant accounting policies and other explanatory notes;
- (c) in the definition of “revenues” by the deletion of “section 101” and the substitution of “section 302”.

3 Amendment of section 3 of Cap. 22:19

10 Section 3 of the principal Act is repealed and the following is substituted—

“3. Object of Act

The object of this Act is to—

- 15 (a) secure transparency, accountability and sound management of the revenues, expenditure, assets and liabilities of any entity specified in section 4(1);
- (b) ensure public finances are managed in accordance with the principles set out in the Constitution.”.

4 Amendment of section 4 of Cap. 22:19

20 Section 4 (“Application of Act”) of the principal Act is amended in subsection (1) by the insertion after paragraph (d) of the following paragraphs—

- “(e) provincial and metropolitan councils; and
- (f) local authorities.”.

5 New Part inserted in Cap. 22:19

The principal Act is amended by the insertion after Part 1 of the following Part—

25

“PART IIA

PARLIAMENTARY OVERSIGHT OF STATE REVENUES AND EXPENDITURE

5A Parliament to monitor and oversee Public Finances

30 (1) The National Assembly shall, through parliamentary portfolio committees, monitor and oversee expenditure by the State and all Commissions and institutions and agencies of government at every level, including statutory bodies, government-controlled entities, provincial and metropolitan councils and local authorities, in order to ensure that—

- (a) all revenue is accounted for;
- (b) all expenditure has been properly incurred; and
- 35 (c) any limits and conditions on appropriations have been observed.

(2) The Speaker of Parliament shall designate Parliamentary Portfolio Committees according to government portfolios, to examine the expenditure, administration and policy of government departments.

40

5B Responsibilities of Parliamentary Committee on Budgets

(1) The Speaker of Parliament shall designate a Parliamentary Committee of the National Assembly to deal with finance and budgetary matters.

(2) The Committee established in terms of subsection (1) shall deal with representations by commissions and other constitutional entities as to the funds to be allocated to them in each financial year.

5C Responsibilities of the Public Accounts Committee

(1) The Speaker of Parliament shall designate a Public Accounts Committee whose mandate shall be to examine the financial affairs and accounts of Government Departments, state owned enterprises, provincial and metropolitan councils and local authorities. 5

(2) The Committee designated in terms of subsection (1) shall be responsible for examining all reports of the Auditor-General. 10

(3) The Committee performs an oversight role of reviewing the financial statements of Departments funded from public funds.

5D Parliament to observe standing rules and orders

In discharging its functions in terms of sections 5A, 5B and 5C, the parliament shall pay due regard to the standing rules and orders.”. 15

6 Amendment of section 6 of Cap. 22:19

Section 6 (“Treasury to manage and control public resources”) of the principal Act is amended by the insertion after subsection (3) of the following subsection—

“(3a) The written departmental instructions issued by the Accounting Officer in terms of subsection (3) shall be approved by Treasury and a copy of the approved departmental instructions shall be submitted to the Auditor-General.”. 20

7 Amendment of section 7 of Cap. 22:19

Section 7 (“Duties and powers of Minister”) of the principal Act is amended in subsection (1) by—

(a) the repeal of paragraph (b) and the substitution of the following paragraphs— 25

“(b) to advise the Government on the allocation of public resources as between ministries, reporting units, public entities, constitutional entities, metropolitan provinces, local authorities and any programmes of Government independent of the foregoing; 30

(c) to provide guidance on measures that should be adopted by Government to ensure resource allocation processes, promote balanced national development, gender parity and equity responsiveness.”.

8 New section inserted in Cap. 22:19 35

The principal Act is amended by the insertion after section 10 of the following section—

“10A Director responsible for finance

(1) The day-to-day operations of public finance systems in Ministries shall, subject to this Act, be controlled and managed by a Director responsible for finance, whose office shall be a public office and shall form part of the Civil Service, and who shall report to the accounting officer appointed in terms of section 10. 40

(2) The Director responsible for finance shall be directly accountable to the accounting officer of a Ministry for ensuring the performance and exercise of the functions of the finance office.”. 45

9 Amendment of section 12 of Cap. 22:19

Section 12 (“Loss or destruction of or damage to State property”) of the principal Act is amended by the repeal of subsection (8) and the substitution of—

- 5 “(8) An appeal in terms of subsection (7) shall be lodged with the appropriate Minister who, before forwarding it to the Minister, shall submit it to the Auditor-General for any comments he or she may wish to make thereon.”.

10 New section inserted in Cap. 22:19

The principal Act is amended by the insertion after section 12, of the following sections—

10 “12A Duties of custodians of public funds and public property

(1) Any person who is responsible for the expenditure of public funds shall ensure that such funds are spent in accordance with authorised purposes and authorised amounts.

15 (2) Any person who has the custody or control of public property shall safeguard such property and ensure that it is not lost, damaged, destroyed, misapplied or misused.

12B Management of State assets

(1) Every accounting officer shall be responsible for the assets of the Ministry for which he or she is accountable.

20 (2) In carrying out the responsibilities referred to in subsection (1) every accounting officer shall ensure that proper control systems exist for the custody and management of the assets.

25 (3) Control systems for asset management shall ensure that preventive mechanisms are in place to eliminate loss, theft, wastage and misuse.

(4) Every accounting officer shall keep asset records, both manual and electronic, that ensure effective, efficient, economical and transparent use of assets.

30 (5) Every accounting officer shall conduct a periodical physical verification of State assets.

12C Treasury surcharge

(1) In this section—

35 “a surcharge” shall apply to persons who are in the employment of the State or who were in the employment of the State at the time of any deficiency in or improper payment of, or any payment not duly vouched for or loss or destruction of, public moneys for which they were responsible;

40 “any reference to moneys” shall be construed as including a reference to tokens, stamps or other such instruments which have a face value or are to be sold for an amount shown on the face thereof and, in the case of any deficiency in such instruments, a surcharge in terms of this section may be calculated in relation to the face value of such instruments.

(2) If—

45 (a) it appears to the Treasury that any person to whom the provisions of this section apply was responsible for—

- (i) any deficiency in the collection of or accounting for public moneys; or
- (ii) any improper payment of public moneys; or
- (iii) any payment of public moneys which is not duly vouched for and the Treasury is satisfied that such payment has resulted in a loss of public moneys or a further payment of public moneys in respect of the same matter; or 5
- (iv) any deficiency in or destruction of public moneys; and
- (v) an explanation satisfactory to the Treasury is not, within a period specified by them, furnished to them with regard to such irregularity as is referred to in paragraph (a); 10

the Treasury may impose a surcharge against the said person the amount of any sums not collected or accounted for or the amount of any deficiency in or improper payment, payment not duly vouched for or loss or destruction of public moneys, as the case may be: 15

Provided that no surcharge may be raised against any person who has acted in good faith and without gross negligence,

(3) The Minister may at any time withdraw a surcharge— 20

- (a) in respect of which a satisfactory explanation has been received; or
- (b) if it otherwise appears to him or her that no surcharge should have been made.

(4) Whenever the Treasury raises a surcharge in terms of subsection (2) or withdraws a surcharge in terms of subsection (3), they shall immediately notify the appropriate accounting officer. 25

(5) Any person who is dissatisfied with a surcharge raised against him or her by the Treasury, he or she may, within a period of one month after he or she has been notified thereof or such further period as the appropriate Minister in special circumstances may allow, appeal in writing to the Minister against such surcharge, giving his or her reasons as to why he or she feels that he or she should not have had a surcharge imposed on him or her. 30

(6) An appeal in terms of subsection (5) shall be lodged with the appropriate Minister who shall submit it to the Treasury for its consideration. 35

(7) After considering an appeal in terms of subsection (5) the Treasury shall—

- (a) reject the appeal; or
- (b) make an order directing that the person concerned be released wholly or in part from the surcharge; as may appear to it to be just and reasonable. 40

(8) A surcharge raised by the Treasury which has not been withdrawn or from which the person concerned has not been released in terms of section 5 shall be a debt due to the State. 45

(9) The amount of any surcharge which has been recovered shall be paid to the Consolidated Revenue Fund or the account in respect of which the surcharge was raised.”.

11 Amendment of section 16 of Cap. 22:19

Section 16 of the principal Act is repealed and the following substituted—

“16 Money to be paid into Exchequer Account

(1) In subsection (5)—

5 “small-scale commercial land” has the meaning given to it by section 2(1) of the Rural District Councils Act [*Chapter 29:13*].

(2) Subject to this section and section 18(9), all revenues shall be paid into the Exchequer Account.

10 (3) A receiver of revenue may, if authorised by the Treasury and subject to such conditions as may be fixed by the Treasury, withhold from the Exchequer Account revenues which have been collected and shall retain revenues so withheld in a deposit account for the purpose of making refunds of revenues or money erroneously brought to account as revenues.

15 (4) Public moneys that are not revenues shall, if so prescribed, be paid into the Exchequer Account with effect from such date as may be prescribed.

20 (5) Revenues received from the lease of a business or residential site in small scale commercial land shall be paid to the local authority in whose area that business or residential site is situated.”.

12 New section substituted for section 17 of Cap. 22:19

Section 17 of the principal Act is repealed and the following section is substituted—

25 **“17 Control of Expenditure and issues from the Consolidated Revenue Fund**

(1) Notwithstanding anything to the contrary contained in any other enactment—

30 (a) no payment involving a charge upon the Consolidated Revenue Fund shall be made without the written authority of the Treasury;

(b) no expenditure of public moneys shall be incurred on any service unless provision therefor has been made by or in terms of this Act or any other enactment.

35 (2) The Treasury may authorise the issue from the Consolidated Revenue Fund of money appropriated by this Act or any other enactment to any specific purpose—

40 (a) not exceeding the amount so appropriated; or
(b) where the appropriation is made for a specific purpose without specifying the amount so appropriated, the amount estimated by the Treasury to be required for such purpose.

(3) The Treasury may authorise the issue from the Exchequer Account of—

(a) any amount which it considers appropriate to withdraw from the Exchequer Account for investments otherwise than

through the accounts established in terms of section 22(1) which form part of the Exchequer Account;

- (b) any public moneys, that are not revenues, which have been or may be paid into the Exchequer Account for any purpose.

(4) Notwithstanding any authority issued in terms of subsection (2) or (3), the Treasury may limit or suspend any expenditure authorised by such authority if, in its opinion, such action is in the public interest. 5

(5) Where, prior to the closing of the accounts of a financial year which relate to money appropriated by any enactment, it is found that an amount has been improperly charged against such appropriation, that amount shall be disallowed and the expenditure recorded against that appropriation in that financial year shall be reduced by the amount so disallowed. 10

(6) Any expenditure disallowed in terms of subsection (5) shall be dealt with as an advance in terms of section 25 until such time as the amount has been recovered or the charge has been otherwise adjusted.”. 15

13 New section inserted in Cap. 22: 19

The principal Act is amended by the insertion after section 17 of the following sections —

“17A Costs and expenses to be direct charges 20

(1) Costs and expenses incurred in collecting and managing the Consolidated Revenue Fund shall be direct charges against such fund.

17B Grants of credit on the Consolidated Revenue Fund

(1) When an issue from the Consolidated Revenue Fund or Exchequer Account has been authorised in terms of this Act, the Accountant-General may by requisition, from time to time, require the Minister to grant a credit on the Exchequer Account not exceeding the aggregate sum authorised in terms of the Act. 25

(2) On receipt of a requisition in terms of subsection (1), the Minister shall grant a credit on the Exchequer Account in accordance with such requisition if he or she is satisfied that — 30

- (a) the amount has been lawfully authorised; and
(b) the amount so requisitioned, together with any other amounts previously requisitioned during the financial year, does not exceed the aggregate amount that may lawfully be authorised. 35

(3) A credit granted by the Minister in terms of subsection (2) shall constitute the necessary authority to the Reserve Bank to transfer the amount specified therein from the Exchequer Account to the Paymaster-General’s Account in accordance with the directions of the Treasury.

(4) Statements showing payments into and withdrawals from the Exchequer Account shall be rendered by the Reserve Bank to the Treasury at such intervals and in such form as the Treasury may direct.”. 40

14 Amendment of section 18 of Cap. 22:19

Section 18 (“Establishment of other public funds”) of the principal Act is amended by the insertion after subsection (11) of the following subsection — 45

“(12) An accounting officer may appoint management committees to assist him or her in the managing of the financial affairs:

Provided that the roles and responsibilities of these committees are stated in writing and that any fees paid to members of such committees are paid in accordance with the provisions of this Act.”.

15 Amendment of section 19 of Cap. 22:19

Section 19 (Anticipated or unauthorised excess expenditure) of the principal Act is amended—

- (a) by the repeal of subsection (1);
- (b) in subsection (2), by the deletion of “House of Assembly” and the substitution of “National Assembly” wherever it occurs;
- (c) in subsection (3), by the deletion of “section 103(5)” and the substitution of “section 307(2)”.

16 Amendment of section 22 of Cap. 22:19

Section 22 of the principal Act is repealed and the following is substituted—

“22 Establishment of banking accounts

(1) The Treasury shall establish an account with the Reserve Bank or an authorised financial institution, to be known as the Exchequer Account and such account shall be for the deposit of moneys forming the Consolidated Revenue Fund.

(2) The Treasury may, within the Exchequer Account, establish separate accounts for the investment of surplus funds, which accounts shall be part of the Exchequer Account.

(3) The Treasury shall establish an account with the Reserve Bank or an authorised financial institution, to be known as the Paymaster-General’s Account and such account shall be for the disbursement of moneys forming the Consolidated Revenue Fund.

(4) The Treasury may establish with a financial institution or any similar body outside Zimbabwe or authorise the establishment therewith of such other accounts as it may deem necessary or desirable for the purposes of controlling or administering public moneys.

(5) No account shall be opened with a financial institution or other such body, whether within or outside Zimbabwe, for the deposit of public moneys otherwise than in terms of this Act, unless the written authority of the Accountant-General has been obtained therefor.

(6) Where an account has been opened with a financial institution or other body in terms of this section, the officer responsible for the administration of that account shall not incur any overdraft on that account otherwise than in accordance with the written authority of the Accountant-General.”.

17 Amendment of section 24 of Cap. 22:19

Section 24 (“Special warrants for issues to meet unforeseen expenditure”) of the principal Act is amended by the repeal of subsection (3) and the substitution of—

“(3) An issue authorised in terms of subsection (1) shall be included in additional or supplementary estimates of expenditure laid without delay before

the National Assembly and, if the National Assembly approves the estimates, the money must be charged upon the Consolidated Revenue Fund by an additional or supplementary Appropriation Act.”.

18 Amendment of section 27 of Cap. 22:19

Section 27(“Issue of money to carry on government after dissolution of Parliament”) of the principal Act is amended by the deletion of subsection (1) and the substitution of—

“(1) Subject to subsection (2), if at any time Parliament has been dissolved before any provision or sufficient provision has been made in terms of Chapter 17 of the Constitution or this Act for the carrying on of the Government of Zimbabwe, the President may authorise the issue of money from the Consolidated Revenue Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until three months after the National Assembly first meets after the dissolution.”.

19 New section inserted in Cap. 22: 19

The principal Act is amended in Part III (National Budget) by the insertion before section 28 of the following section—

“27A Preparation of estimates of revenue and expenditure

(1) Treasury shall, for each financial year, timeously—

- (a) prepare a Budget Calendar for the formulation of the National Budget for the subsequent year;
- (b) prepare the Budget guidelines for preparation of recurrent and capital budgets;
- (c) conduct Stakeholder consultations for the formulation of the National Budget.

(2) The Minister may, through the appropriate portfolio committee of Parliament, seek the views of Parliament in the preparation and formulation of the annual budget, for which purpose the appropriate portfolio committee shall conduct public hearings to elicit the opinions of as many stakeholders in the national budget as possible.”.

20 Amendment of section 28 of Cap. 22:19

Section 28 of the principal Act is amended—

- (a) in subsection (2) by the deletion of “House of Assembly” and the substitution of “National Assembly”;
- (b) by the insertion after subsection (2) of the following subsection—
 - “(2a) The Minister shall submit separate estimates of revenue and expenditure for the following institutions—
 - (a) each Commission established by the Constitution;
 - (b) the office of the Auditor-General;
 - (c) the National Prosecuting Authority;
 - (d) the Council of Chiefs; and
 - (e) any other institution established by an Act of Parliament.”;
- (c) in subsection (3) by the deletion of “House of Assembly” and the substitution of “National Assembly”;

- (d) by the repeal of subsections (4) and (5) and the substitution of the following—

5 “(4) The Commissions and institutions whose estimates are submitted in accordance with subsection (2) shall be given a reasonable opportunity to make representations to a parliamentary committee as to the funds to be allocated to them in each financial year.”.

21 New sections inserted in Cap. 22: 19

The principal Act is amended by the insertion after section 28 of the following sections—

10 “28A Budget management

(1) Treasury shall—

- (a) notify State Entities and commissions of approved budgets through warrants;
- 15 (b) upload approved budgets on the Integrated Public Financial Management system.

(2) Every Accounting Officer shall be responsible for monitoring his or her budgets through commitment control.

28B Cash management

20 (1) Treasury shall be responsible for cash management and shall issue expenditure ceilings to State Entities and Commissions.

(2) Every Accounting Officer shall submit cash flow forecasts to the Treasury.

28C Additional or supplementary estimate

25 (1) If in respect of any financial year it is found that the amount appropriated by an Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act, a supplementary estimate, showing the amount required, shall be laid before the National Assembly, and the votes of expenditure shall be included in a Supplementary Appropriation Bill to be introduced to

30 the National Assembly to provide for the appropriation of those sums.”.

22 New section inserted in Cap 22: 19

The principal Act is amended by the insertion after section 29 of the following section—

“29A Virementing

35 (1) Whenever any money has been appropriated under a vote of Parliament for a particular purpose, the Treasury may authorise the application of an expected saving on that vote to meet an excess of expenditure on any existing subhead of that vote or expenditure on a new subhead of that vote.

40 (2) The Treasury shall delegate any accounting officer to authorise virements within subheads, subject to any restrictions that it may impose.”.

23 Amendment of section 31 of Cap. 22:19

Section 31 (“Duration of appropriation and warrants”) of the principal Act is repealed and the following is substituted—

“31 Duration of appropriation and warrants

Where provision is made in an Appropriation Act, warrant or authority issued in terms of this Act for the incurring of expenditure on any service, such provision shall lapse and cease to have effect at the close of the financial year to which that Appropriation Act relates and, save as is otherwise provided in this Act, the unexpended balance of any money withdrawn from the Consolidated Revenue Fund shall be re-deposited in the Exchequer Account: 5

Provided that where any amount appropriated by any provision of an Appropriation Act is specified in the Estimates of Expenditure to which such appropriation relates as being required for a grant, then, unless the Treasury otherwise directs, the provisions of this subsection shall not apply in respect of that amount or in respect of the effect of that provision.”. 10

24 New section inserted in Cap. 22: 19

Part IV of the principal Act is amended by the insertion before section 32 of the following section— 15

“31A Financial reporting framework

(1) The cash basis of accounting shall be used when recording and preparing financial statements for voted funds. The accrual basis of accounting shall be used when recording and preparing financial statements for funds, statutory funds, statutory bodies, provincial and metropolitan councils and local authorities. 20

(2) The Accounting Standards that shall be adopted.”.

25 Amendment of section 32 of Cap. 22:19

Section 32 (“Preparation and reporting of annual financial statements by Ministries”) is repealed and the following is substituted— 25

“32 Preparation and reporting of annual financial statements

(1) Every director responsible for finance shall prepare or cause to be prepared the annual financial statements of the Ministry concerned and shall submit such statements to the accounting officer in that Ministry and to the Accountant-General within thirty days after the end of the year concerned. 30

(2) The financial statements referred to in subsection (1) shall be prepared in accordance with the Financial Reporting Framework as provided for in section 37.”. 35

26 Amendment of section 35 of Cap. 22:19

Section 35 of the principal Act is repealed and the following is substituted—

“35 Consolidation of Annual Financial Statements

(1) Every accounting officer of a Ministry shall — 40

- (a) keep or cause to be kept proper records of account; and
- (b) submit financial statements within thirty days after the end of the financial year to—

- (i) the Auditor-General for audit; and
- (ii) the Accountant-General for consolidation. 45

(2) Unless the Accountant-General otherwise directs, all appropriation accounts shall be closed and the financial statements are prepared and submitted to the Treasury within one month after the end of the financial year.

(3) Within three months after the end of each financial year the Accountant-General shall prepare and transmit to the Auditor-General, in such detail as the Accountant-General, after consultation with the Auditor-General, considers necessary, financial statements relating to the Consolidated Revenue Fund and the financial position of the State on the last day of that financial year.

(4) Save as otherwise provided by this Act or any other enactment, an officer administering a trust, fund or account shall, within three months after the end of each financial year, prepare and transmit to the Accountant-General financial accounts, statements or returns in relation to that trust, fund or account during that financial year in such form as the Accountant-General may direct.

(5) If in the opinion of the responsible Minister it would not be in the public interest to publish any account, statement or return which is required to be transmitted to the Accountant-General in terms of subsection (4), the accounting officer shall, on the instructions of the Minister given in writing, endorse the account, statement or return accordingly.”.

27 New section inserted in Cap. 22: 19

The principal Act is amended by the insertion, after section 36 of the following section—

“36A Submission of financial statements to National Assembly

(1) Every accounting officer of a constitutional entity or public entity shall submit to—

- (a) the National Assembly the annual report and the audited financial statements relating to the operations of the constitutional entity or public entity, as the case may be, within thirty days of the completion of the audit;
- (b) the Minister, the appropriate Minister, the Accountant-General, the National Assembly and the Auditor-General, any other reports that may be required in terms of this Act.

(2) Every accounting officer of a Ministry shall, within ninety days of the end of the financial year, submit to the respective Parliamentary Portfolio Committee the unaudited annual financial statements of his or her respective Ministry.

(3) The Minister shall, within ninety days of the end of the financial year, submit to the National Assembly the unaudited consolidated annual financial statements.

(4) Every appropriate Minister shall within thirty days of the tabling of the Report of the Auditor-General thereon before the National Assembly, submit to the respective Parliamentary Portfolio Committee the audited annual financial statements of his or her respective Ministry.

(5) The Minister shall submit to the National Assembly audited consolidated annual financial statements within one hundred and eighty days of the end of the financial year.”.

28 Amendment of section 37 of Cap. 22:19

Section 37 (“Financial statements and budgets to comply with generally accepted accounting practice”) is repealed and the following is substituted—

“37 Financial statements to comply with Financial Reporting Framework

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(1) The financial statements required to be prepared in terms of this Act shall be prepared in accordance with generally accepted accounting practices recognised by the Accounting Standard Setting Board in Zimbabwe and approved by the Accountant-General.”.

29 Amendment of section 81 of Cap. 22:19

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Section 81 (“External auditors”) of the principal Act is repealed and the following is substituted—

“81 External auditors

(1) The Auditor-General shall audit or cause to be audited the financial statements, financial systems and financial management of all accounting officers, receivers of revenue; statutory funds; designated or specified public entities; constitutional entities; provincial and metropolitan councils; and local authorities.

15

(2) The Auditor-General shall satisfy himself or herself that—

(a) all reasonable precautions have been taken to safeguard the collection of public money and that the provisions of this Act and any other enactment relating to the accounting for public resources and of any direction or instruction issued in terms of section 78 or departmental instruction referred to in section 6(3) which relate thereto have been duly observed;

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(b) all payments of public money—

(i) have been made in accordance with proper authority; and

(ii) have been properly charged; and

(iii) are supported by sufficient vouchers or proof of payment;

30

(c) all moneys expended and charged to an appropriation account—

(i) have been applied to the purposes for which the grants made by Parliament were intended; and

(ii) were expended in conformity with the appropriate authority;

35

(d) all reasonable precautions have been taken to safeguard and control State property and all issues of State property were made in accordance with proper authority.

(3) If at any time it appears to the Auditor-General that any irregularity has occurred in—

40

(a) the collection, receipt, custody, control or payment of public money; or

(b) the receipt, custody, control, issue, sale, transfer or delivery of any State property;

45

he or she shall immediately bring the matter to the notice of the Treasury, the appropriate accounting officer or receiver of revenue, as the case may be, and—

- 5 (c) the Public Service Commission, where in his or her opinion the irregularity constitutes misconduct on the part of any member of the Public Service; and
- (d) the Commander of the branch of the Defence Forces concerned, where in his or her opinion the irregularity constitutes misconduct or a breach of discipline on the part of any member of the Defence Forces; and
- 10 (e) the Commissioner-General of Police, where in his or her opinion the irregularity constitutes misconduct or breach of discipline on the part of any member of the Police Force; and
- 15 (f) the Commissioner of Prisons, where in his or her opinion the irregularity constitutes misconduct or a breach of discipline on the part of any member of the Prison Service; and
- (g) the Attorney-General, where in his or her opinion the irregularity constitutes a criminal offence.
- 20 (h) the Zimbabwe Anti-Corruption Commission, where in his or her opinion the irregularity constitutes a case of suspected corruption.

(4) In the performance of his or her functions in terms of this section, the Auditor-General may order the taking of measures to rectify any defects in the management and safeguarding of public funds and public property and public officers must comply with orders given to them in terms of this subsection.

(5) In the performance of his or her functions in terms of this section, an external auditor shall have the same powers as an internal auditor under section 80(3).”.

30 Amendment of section 83 of Cap. 22:19

Section 83 of the principal Act is repealed and the following is substituted—

“83 Annual reports and audited financial statements

(1) The Auditor-General or any independent auditor shall audit the annual financial statements and return the audited statements referred to in section 81(1) within sixty days of receipt thereof.

(2) The annual report and audited financial statements shall—

- (a) contain a report on the activities, outputs and outcomes of the Ministry;
- 40 (b) fairly present the state of affairs of the Ministry, reporting unit, constitutional entity or public entity for which the Ministry is responsible;
- (c) include, where appropriate—
 - 45 (i) particulars relating to losses arising through criminal activities, and criminal and disciplinary action taken;
 - (ii) instances of unauthorised expenditure;

- (iii) instances of irregular expenditure;
- (iv) instances of fruitless and wasteful expenditure;
- (v) recoveries and write-offs of public resources;
- (vi) any other matters as may be prescribed.”.

31 Amendment of section 84 of Cap. 22:19

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Section 84 of the principal Act is repealed and the following is substituted—

“84 Audit committees

(1) Every Ministry, statutory fund, constitutional entity, public entity provincial and metropolitan council, and local authority shall establish an audit committee.

10

(2) The responsibilities of an audit committee shall include the following—

- (a) to review internal controls, including the scope of the internal audit programme, and the internal audit findings, and to recommend appropriate action to be taken by the responsible authorities;
- (b) to ensure that accounts are prepared in a timely and accurate manner and to ensure the prompt publication of the annual accounts;
- (c) to review with the Auditor-General or other external auditors, as may be appropriate, the scope of their audit plan, the system of internal audit reports and assistance given by officers or staff to the auditors and any findings and action to be taken in connection therewith.

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(3) An audit committee—

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- (a) shall consist of at least three persons, of whom, in the case of a Ministry—
 - (i) one person shall not be a member of the Public Service; and
 - (ii) the majority shall not be persons employed in that Ministry, except with the approval of the appropriate Minister; and
 - (iii) the chairperson shall not be a member of the Public Service employed in the Ministry;
- (b) shall meet at least twice a year; and
- (c) may be established for two or more Ministries, or public or constitutional entities or provincial and metropolitan councils and local authorities if the Treasury considers it to be more economical.

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(4) The composition of the Audit Committee shall promote the principle of gender balance and equity, and the members shall be appointed on merit.

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(5) The Auditor-General, and external and internal auditors, shall have the right to attend and participate in the deliberations of the audit committee.

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(6) Upon the request of any auditors, the chairperson of an audit committee shall convene a meeting to consider any matter that the auditors believe should be brought to the attention of the responsible authorities.

(7) The chairperson of the audit committee shall send or cause to be sent—

- (a) all notices of audit committee meetings; and
- (b) all minutes of audit committee meetings; to the Accountant-General, Auditor-General, internal auditors and external auditors where appropriate.”.

32 Amendment of section 90 of Cap. 22:19

Section 90 of the principal Act is amended by the repeal of subsection (5) and the substitution of—

“(5) Where in relation to money notified in terms of subsection (3) no claim is made or a claim is dismissed, any such money shall become public money and be paid into the Exchequer Account, and no person shall have any right of action against the Treasury or the State in relation to the money.”.

33 New sections inserted in Cap. 22:19

The principal Act is amended by the insertion after section 90 of the following sections—

90A Retention moneys

Any money payable by the State under a contract which is withheld to ensure due performance of that contract may, if the Treasury so authorises, be charged to the appropriation account relating to that contract and the money so charged shall be credited to a suspense account and may thereafter be paid out in accordance with the contract or as directed by the Treasury.

90B Recovery of debts due to State

(1) Through the Accountant General or an accounting officer, a debt due to the State may be—

- (a) sued for and recovered by action in any court of competent jurisdiction at the suit of the responsible Minister;
- (b) subject to subsection (2), set off against any amount due by the State to the person by whom that debt is due.

(2) In the case of a set-off in terms of paragraph (b) of subsection (1) against a salary payable to a person who remains in the employment of the State or a pension, the debt may be recovered in full or in monthly instalments at a rate fixed by the Treasury.”.

34 New sections inserted in Cap. 22:19

The principal Act is amended by the insertion of a new section 94 which reads—

94 Financial provisions under Inter-Governmental Framework

(1) In accordance with section 301 of the Constitution, not less than five *per centum* of the national revenues raised in any financial year will be allocated to the local, provincial and metropolitan authorities.

(2) The Consolidated Revenue Fund is hereby appropriated for that purpose.”.

BILL

To make amendments to the Provincial Councils and Administration Act
[*Chapter 29:11*] to bring it into conformity with the Constitution; and
to provide for matters connected with or incidental to the foregoing.

5 Now therefore be it enacted by the Parliament and the President of Zimbabwe.

1 Short title and date of commencement

(1) This Act may be cited as the Provincial and Metropolitan Councils
Administration Act, 2021.

(2) This Act shall come into operation on a date to be fixed by the President
10 by statutory instrument.

2 Amendment of section 1

Section 1 (“Short title”) of the Provincial Councils and Administration Act
[*Chapter 29:11*] (hereinafter called the principal Act) is amended by the deletion
of “Provincial Council and Administration Act” and substitution to “Provincial and
15 Metropolitan Councils Administration Act”, and thereafter wherever it appears.

3 Amendment of section 2

Section 2 (“Interpretation”) of the principal Act is amended by the deletion of
“Provincial governor” wherever it appears and the substitution of “Minister of state
and devolution”.

H.B. 5, 2021.]

Printed by the Government Printer, Harare

4 Corporate status of Councils and procedure for alteration of provinces

Every Council shall be a body corporate with perpetual succession and shall, in its own name, be capable of suing and being sued and generally of doing, suffering and performing all such things as, by this Act and other law, it may do, suffer and perform.

5 Criteria for devolution of governmental powers

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(1) Section 264 of the Constitution provides that “whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively”.

(2) The competence of a Council to carry out any devolved functions shall be as may be prescribed. 10

(3) Subject to this section, the President acting on the advice of the Minister may, by proclamation, declare that governmental powers and responsibilities exclusively exercised by central government be devolved to the Council concerned.

(4) The advice by the Minister to the President in terms of subsection (2) shall be tendered after the Minister has conducted consultation with respective Ministers 15

6 Devolution of governmental powers and responsibilities

(1) Subject to this section, the President, acting on the advice of the Minister, may, by proclamation in the *Gazette*, declare that governmental powers and responsibilities specified in the proclamation, with effect from a date specified in the proclamation, devolve on the Council concerned. 20

(2) Before the exercise by the President of powers in terms of subsection (1), the Minister shall consult—

- (a) the Council concerned; and
- (b) national or provincial organisations representing local authorities in the province concerned; 25

calling upon them to make recommendations to the Minister, within six months or such longer period as the Minister may authorise or require, on the proposed exercise of powers by the President.

(3) The Minister shall cause a notice to be published in at least three issues of a newspaper— 30

- (a) stating that it is proposed to recommend to the President that he or she exercises such powers and setting out the nature of the proposals and, in particular, specify—
 - (i) the functions proposed for devolution on a Council; 35
 - (ii) where the proposals will affect the area of any local authority or of another province, the proposed manner of discharge of the function in relation to any such area;
- (b) calling upon the organisations and any person who wishes to make representations in relation to the proposals to lodge them with the Minister and the Council concerned within the period stated in the notice, which period shall be at least thirty days from the date of the last publication of the notice. 40

(4) The Minister shall, after receiving the report of the Council, cause it to be laid before Parliament on one of the fourteen days on which the Senate and the National Assembly next sit, whichever House meets first after the date on which the 45

Minister received the report and if, in pursuance of a resolution of Parliament, an address is presented to the President requesting him or her to exercise his or her powers in terms of subsection (1), the President may, by proclamation in the *Gazette*, declare the governmental powers and responsibilities to be exercised by the Council.

5 (5) When an address is presented to the President in terms of subsection (4) concerning the exercise of powers by the President in accordance with that subsection, there shall also be submitted to him or her—

- (a) the report of any organisation referred to in subsection (2)(b);
- (b) any representations made in terms of subsection (3); and
- 10 (c) any comments the Minister may wish to make on the reports or representations

7 Amendment of section 3

Section 3 (“Declaration, alteration and abolition of provinces”) of the principal Act is amended by the deletion of that section and the substitution of—

“3 Division and alteration of provinces into districts

15 (1) The President may at any time by statutory instrument provide for the division of provinces into districts.

(2) The President may alter district boundaries.

(3) Before the President exercises his powers in terms of section x, the Minister shall consult with the Zimbabwe Electoral Commission and with the people in the provinces and districts concerned and may appoint a commission from the residents of the area concerned which shall make recommendations to the Minister, within six months or such longer or shorter period as the Minister may authorise or require, upon—

- (a) the proposed exercise of powers by the President; and
- 25 (b) the matters referred to in subsection (1) of section nine where it is intended to establish a Council for any proposed district and the Minister has required- the commission to make recommendations to him upon those matters.

(4) If, before the President exercises his powers in terms of section x, the Minister has not appointed a commission in terms of subsection (1), the Minister shall take such steps as are reasonably necessary to give residents of the area concerned notice of the proposal to exercise such powers, and, in addition, shall cause a notice to be published in at least three issues of a newspaper—

- 35 (a) stating that it is proposed to recommend to the President that he should exercise such powers and setting out the nature of the proposals and, in particular, to the extent applicable—
 - (i) the proposed boundaries of the district concerned;
 - (ii) the proposed name of the district concerned;
 - 40 (iii) where the proposals will affect the area of any Council or any ward thereof—
 - A. the proposals in relation to the wards and Councillors involved;
 - B. the proposed apportionment between any Councils concerned of any property, assets, rights and
- 45

- liabilities, including the payment of any moneys and the protection of the rights of employees;
- C. the nature of any powers proposed to be exercised in terms of subsection (3) of section ten; and
- (b) calling upon any person who wishes to make representations in relation to the proposals to lodge them with the Minister within the period stated in the notice, which period shall be at least thirty days from the date of the last publication of the notice. 5
- (5) When any recommendation is submitted to the President concerning the exercise of his powers in terms of section x, there shall be submitted to him, together with the recommendation— 10
- (a) the report of the commission, if any, appointed in terms of subsection (1); or
- (b) the substance and number of the objections, if any, lodged with the Minister in response to a notice published in terms of subsection (2); as the case may be, together with any comments the Minister may wish to make on the report or objections. 15
- (6) After considering any report or objections submitted to him in terms of subsection (3) in relation to any proposal to declare a district or alter the boundaries of a district, the President may, in the exercise of his powers in terms of section six— 20
- (a) declare a greater or lesser area to be a district; or
- (b) alter the boundaries of the district to a greater or lesser extent; as the case may be, and it shall not be necessary for the Minister to reconvene any commission appointed in terms of subsection (1) or to appoint a further such commission, or to cause a further notice to be published in terms of subsection (2): 25
- Provided that the President shall not declare a greater area to be a district or alter the boundaries of a district to a greater extent unless he is satisfied that there has been adequate consultation with every Council, commission and province concerned and with the people living in the area concerned. 30

8 Amendment of section 4

Section 4 (“Appointment of Provincial governors”) of the principal Act is amended in subsection (2) by the deletion of “Minister” and the substitution of “President”.

9 Amendment of section 6

Section 6 (“Term of office of Provincial governors”) of the principal Act is amended by the deletion of subsection (1) and (2) and the substitution of— 35

“ Subject to section eight , the term of office of a Minister of State and Devolution shall be a period not exceeding five years but may be appointed for a second or subsequent term of office.”

10 Amendment of section 7

Section 7 (“Oaths of office to be taken by Provincial governors”) of the principal Act is amended by the deletion of “Schedule 1” and the substitution of “Schedule 3 of the Constitution”. 40

11 Amendment of section 8

Section 8 (“Vacation of office by Provincial governors”) of the principal Act is amended by the— 45

- (a) deletion in subsection (2) (f) (iv) of “Chiefs and Headmen Act [*Chapter 29:01*] and substitution of “Traditional Leaders Act [*Chapter 29:17*];
- (b) deletion of subsection (4).

12 Amendment of section 9

- 5 Section 9 (“Conditions of service of Provincial governors”) of the principal Act is amended by the deletion of subsection (4).

13 Amendment of section 10

Section 10 (“Functions of Provincial governors”) of the principal Act is amended by the deletion of the section and substitution of—

10 Functions of the Minister of State and Devolution

The functions of the Minister of state and devolution shall be—

- (a) facilitate co-ordination between central and local government to ensure that national development goals are realised;
- 15 (b) foster synergistic relationships between the national planning agenda and project and programme implementation at local level;
- (c) monitor and evaluate effective and efficient implementation of government programmes and projects in the provinces to ensure attainment of national aspirations and objectives;
- 20 (d) facilitate implementation of government interventions, such as community ownership trusts and employee ownership schemes leveraging on resources comparative advantages in the provinces;
- 25 (e) preside over all state occasions and functions in the province as well as state visits by dignitaries to the province; and
- (f) report to the President as appropriate.”

14 New section(s) inserted in Cap. 29:11

Part II (“Provinces and Provincial governors”) of the principal Act is amended by the insertion after section 10 of the following sections—

30 “10A Establishment of technical committee

(1) There shall be a Provincial and Metropolitan development committee resident in the office of the Minister of state and devolution.

(2) The Provincial or Metropolitan Development committee shall consist of—

- 35 (a) the Provincial Development Coordinator for the province; and
- (b) the Town Clerk, Chief Executive Officer, or Town Secretary of every Municipal Council, Town Council, Local Board, Rural Council or District Council whose Mayors or
- 40 Chairman, as the case may be, are members of the Provincial or Metropolitan Council; and
- (c) the Senior Officer in the province of—
 - (i) the Police Force; and

- (ii) the organisation known as the Central Intelligence Organisation; and
- (iii) the Zimbabwe National Army;
- (d) the Provincial head of each Ministry and department of a Ministry within the province that the Minister may designate by notice in writing to the Minister of State and Devolution; and 5
- (e) such further members representing other organizations and interests as the Minister, on the recommendation of the Minister of State and Devolution may appoint. 10

(3) The Provincial and Metropolitan development committee shall be presided over by the Provincial development coordinator.

10B Functions of technical committee

The functions of the Provincial technical team shall be to—

- (a) provide technical assistance to the office of the Minister of State and Devolution; and 15
- (b) provide technical assistance to the Provincial and Metropolitan Councils.”.

15 Amendment of section 11

Section 11 (“Establishment and naming of Provincial Councils”) of the principal Act is amended by the repeal of the section. 20

16 Amendment of section 12

Section 12 (“Provincial Councils to be bodies corporate”) of the principal Act is amended by the insertion after “A Provincial Council” of “and a Metropolitan Council”.

**A clause that states Provincial Council shall include a Metropolitan Council, where appropriate. Sections 23, 24, 2 include Metropolitan Councils. 25

17 Amendment of section 13

Section 13 (“Functions of Provincial Councils”) of the principal Act is amended by the repeal and substitution of section 13 of the following—

“13 Functions of Provincial and Metropolitan Councils 30

Subject to this Act, the functions of a Provincial or a Metropolitan Council shall be—

- (a) planning and implementing social and economic development activities in its province;
- (b) co-ordinating and implementing government programmes in its province; 35
- (c) planning and implementing measures for the conservation, improvement and management of natural resources in its province;
- (d) promoting tourism in its province, and develop facilities for that purpose; 40
- (e) monitoring and evaluate the use of resources in its province;
- (f) formulating policies both long term and short term for the province;

- (g) preparing annual development and other plans for the province;
- (h) reviewing and evaluating the implementation of development plans and policies within the province;
- 5 (i) coordinate State, Provincial, Local Authority and Non- State activities in the Province;
- (j) coordinate disaster response activities in the province;
- (k) promote cooperate governance;
- 10 (l) produce a strategic development plan for the province for the tenure of office and annual updates and updated annually;
- (m) shall maintain a database of the asset base of the province comprising of schools, health facilities, water, roads social amenities and electricity;
- 15 (n) implementing all national legislation within the province except where an Act of Parliament provides otherwise;
- (o) administering in the province, national legislation as necessary, the administration of which has been assigned to the Council in terms of any Act of Parliament; and
- 20 (p) exercising any other functions that may be conferred upon it by or in terms of this Act or any other enactment.

18 New section inserted 12 A

Section 14 (“Membership of Provincial Councils”) of the principal Act is amended by the repeal and substitution of section 14 by the following—

“14 Membership of Provincial Councils

- 25 Subject to this Act, a Provincial Council shall consist of—
- (a) a chairperson of the Council;
 - (b) the senators elected from the province concerned;
 - (c) two senator chiefs;
 - 30 (d) the president and deputy president of the National Council of Chiefs, where their area fall within the province concerned;
 - (e) all members of the National Assembly who are elected in terms of section 124(1)(b) from the province concerned;
 - (f) the women members of the National Assembly elected in terms of section 124 of the constitution;
 - 35 (g) the Mayors and chairperson, by all urban and rural local authorities in the province concerned; and
 - (h) ten persons elected by a system of proportional representation.
- (2) Subject to this Act, a Metropolitan Council shall consist of—
- 40 (a) in the case of Bulawayo, the Mayor of the City of Bulawayo who is the chairperson of the Bulawayo Metropolitan Province
 - (b) in the case of Harare—
 - (i) the Mayor of the City of Harare Metropolitan Council; and

- (ii) the Mayor or chairperson of the second largest urban local authority within the province who is the deputy chairperson of the Harare Metropolitan Council;
 - (c) all the Members of the National Assembly whose constituencies fall within the Metropolitan province concerned; 5
 - (d) the women members of the National Assembly who are elected in terms of section 124((1)(b) from the Metropolitan province concerned;
 - (e) the senators elected from the Metropolitan province concerned; 10
 - (f) the Mayors and deputy Mayors and the chairpersons and deputy chairpersons, by whoever title they are called, of all local authorities in the Metropolitan province concerned.
- (2) A person is qualified to be elected to a Provincial or Metropolitan Council in terms of subsection (1)(c) if he or she is qualified for election as a member of the National Assembly. 15
- (3) Elections to Provincial or Metropolitan Councils must be conducted in accordance with the Electoral Act [*Chapter 2:13*], which must ensure that the Councillors are elected under a party-list system of proportional representation— 20
- (a) which is based on the votes cast for candidates representing political parties in the province concerned in the general election for members of the National Assembly; and
 - (b) in which male and female candidates are listed alternately, every list being headed by a female candidate. 25

19 Assumption of office by members

- (1) A person elected as a member assumes office—
- (a) in the case of an election following a general election, on the ninth day after the announcement of the results of the general election in which the members were elected; 30
 - (b) in the case of a by-election, on the day following polling day or the last polling day, as the case may be.
- (2) Before undertaking any duty as such, a member shall take and subscribe before the clerk such oath of loyalty and office as may be prescribed. 35

20 Conditions of service for members

- (1) Subject to subsection (2), with the written approval of the Minister, in consultation with the minister responsible for finance a Council may, in accordance with any ordinance or standing order of the Council, pay to members a monthly personal allowance at a rate fixed by the Council not exceeding such sum as may be prescribed. 40
- (2) A personal allowance in terms of subsection (1) is not payable to a member—
- (a) in respect of the whole or any period of leave of absence from the Council which exceeds a continuous period of thirty days; and
 - (b) in circumstances where any ordinance or standing order of the Council prohibits such payment. 45
- (3) This section shall not apply to the Chairperson.

21 Amendment of section 14

CHAIRPERSONS OF PROVINCIAL AND METROPOLITAN COUNCILS

(1) At its first sitting after every general election, a Provincial or a Metropolitan Council must elect a chairperson from a list of at least two qualified persons from the membership of Council submitted by—

- (a) the political party which gained the highest number of National Assembly seats in the province concerned; or
- (b) if there is no political party such as is referred to in paragraph (a), the political party which received the highest number of votes cast in the province in that general election for members of the National Assembly.

(2) A person is qualified for election as the chairperson of a Provincial or Metropolitan Council if he or she is qualified for election as a Member of the Senate.

(3) The office of chairperson of a Provincial or Metropolitan Council is a public office but does not form part of the Public Service.

(4) Before commencing his or her duties, the chairperson of a Provincial or a Metropolitan Council must take before the clerk of the Provincial or Metropolitan Council the oaths of loyalty and office in the forms set out in the Third Schedule.

(5) The chairperson of a Provincial or Metropolitan Council may resign by announcing his or her resignation in person to the Provincial or Metropolitan Council.

(6) The chairperson of a Provincial or Metropolitan Council must vacate his or her office—

- (a) on the day on which the Provincial or Metropolitan Council first meets after a general election;
- (b) if he or she become disqualified to be a member of the Provincial or Metropolitan Council;
- (c) if a resolution for his or her removal from office is passed by at least two-thirds of the total membership of the Provincial or Metropolitan Council; or
- (d) if he or she is removed from office by a tribunal referred to in subsection (7).

22 Assumption of office by chairperson

A person elected as chairperson shall without delay assume office upon taking and subscribing before the clerk such oath of loyalty in accordance with the provisions of section 272(4) of the constitution.

23 Functions of Chairperson

(1) The chairperson of the Council shall be a public official with ceremonial functions and presides over Council meetings at which he or she is present and, in the event of an equality of votes on any matter before the Council, he or she shall have, in addition to a deliberative vote, a casting vote.

(2) Whenever the office of chairperson is vacant or the chairperson is absent or incapacitated or fails to act, the vice chairperson will perform the function of the chairperson.

(3) For the purposes of this section, a certificate under the hand of the clerk as to the existence of a vacancy in the office, or the absence or incapacity of the chairperson or the failure of the chairperson to act is *prima facie* evidence of that fact.

24 Remuneration of chairperson

(1) Subject to subsection (2), a Council shall pay the chairperson such remuneration as is approved in terms of section xx.

(2) Where an acting chairperson is required in terms of this Act to perform the functions of the chairperson for a period exceeding fourteen days within a period of thirty days, he or she shall be paid an allowance fixed by the Council for the period he or she so performs such duties.

25 Tenure of office of chairperson

(1) The Chairperson may only vacate his or her office on the grounds specified in section 272 of the Constitution.

(2) The tribunal referred to in section 11 shall inquire into the question of removing the Chairperson from office.

26 Conflict of interest

(1) If a member of Council or other member of a committee has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter and is present at a meeting of the Council or committee at which that contract or other matter is the subject of consideration, he or she shall at that meeting, as soon as practicable after the commencement of the discussion of the item, disclose his or her interest and shall withdraw from that meeting while that item is under consideration and not vote at that or any other meeting on any question relating to that contract or other matter:

Provided that this subsection shall not apply in relation to—

- (i) an interest in a contract or other matter which a member of Council or other member of a committee may have as an inhabitant of the province or as an ordinary consumer of electricity or water; or
- (ii) an interest in a matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered by the Council to members of the public.

(2) For the purposes of subsection (1), a person is regarded as having an indirect pecuniary interest in a contract or any other matter if—

- (a) he or she or any nominee of his or hers is a member of a company or other entity with which the contract is made or is proposed to be made or which has a direct pecuniary interest in such other matter; or
- (b) he or she is a partner or is in the employment of a person with whom the contract is made or is proposed to be made or who has a direct pecuniary interest in such other matter:

Provided that—

- (i) this subsection shall not apply to membership of or employment by a statutory body or Commission;
- (ii) a member of a company or other entity shall not, by reason only of his or her membership, be regarded as having a pecuniary interest in any contract or other matter if he or she has no beneficial interest in any shares or stock issued by that company or other entity.

(3) In the case of married persons living together, an interest of one spouse is, if known to the other, be deemed, for the purposes of this section, to be also an interest of the other spouse.

(4) The clerk shall require all members of the Council to sign, as soon as possible after their assumption of office, an undertaking stating that they are aware of and will abide by their obligations under this section.

(5) Until a member has signed the undertaking, he or she shall not—

- (a) take part in any business of the Council; or
- (b) receive any remuneration or allowance in terms of this Act.

(6) Any member who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

27 Members not to provide professional services for or against Council

(1) Subject to this section, the chairperson or other member or partner, employer or employee shall not act for reward—

- (a) as a legal practitioner on behalf of or against the Council or on behalf of any person who has been charged with having contravened any by-laws of the Council; or
- (b) for the Council as a medical practitioner, veterinary surgeon, architect, engineer, surveyor, accountant, auditor, estate agent, auctioneer, valuer or appraiser or in any other professional capacity; and any chairperson or other member or partner, employer or employee of such chairperson or member who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) A person referred to in subsection (1) may act as medical practitioner for the Council if requested to do so by the affirmative votes of not less than two-thirds of the total membership of the Council.

(3) Subject to subsections (2), no member shall, directly or indirectly—

- (a) sell or let on hire any goods to a Council; or
- (b) for reward, provide any other service to a Council; unless he or she has notified the Council in writing of the extent of his or her interest in the matter and the council has affirmed by a majority vote of two thirds of the total membership of the council.

(4) For the purposes of subsection (4), if goods are let on hire or services are provided to a Council by—

- (a) a partner, employee or spouse of a member; or
- (b) a company or other entity of which a member of Council is a member or has any interest; the member is deemed indirectly to have sold or let the goods on hire or provided the service, as the case may be.

28 Membership of boards

No member and no partner, employer or employee of a member shall act as agent or representative for any other person—

- (a) before a valuation board established in terms of section 241 of the Urban Councils Act [Chapter 29:15]; or
- (b) before a licensing authority constituted in terms of the Shop Licences Act [Chapter 14:17] within the area of jurisdiction of the province.

29 Members to furnish addresses to clerk

(1) A member of Council and any other member of a committee shall furnish to the clerk, in writing, an address within the province and any other contact details to which official communications intended for him or her may be sent.

(2) Where a member of Council or other member of a committee is absent from a meeting of a committee or Council because he or she has not received any communication sent to the address or any other contact details furnished in terms of subsection (1), such absence shall not affect the validity of any meeting or any proceedings of the Council or any committee thereof of which he or she is a member. 5

30 New sections inserted in Cap 29:11

Vacancy of members of Council

- (1) A member of a Provincial Council is a member by virtue of being—
- (a) the Mayor or Chairperson of a Local Authority shall remain a member for so long as he or she holds the office of Mayor or Chairperson, as the case may be, of the Local Authority concerned; 10
 - (b) one of the ten persons elected by a system of proportional representation remains a member and his or her seat becomes vacant under the circumstances relating to members of Parliament.”.

(2) In the event of a vacancy in the membership of the Provincial Councils and Metropolitan Councils, such a vacancy must be filled in terms of the Electoral Law Act [Chapter 2:13] provided that; the vacancy must be filled: 15

- (a) by persons belonging to the same political parties as those who previously held the seats or office; and
- (b) except in the case of Chairpersons, by a person of the same gender as the person who previously held the seats. 20

31 Amendment of section 17

Section 17 (“Filling of vacancies on Provincial Councils”) of the principal Act is amended by the repeal and substitution of section 17 by the following—

“17 Suspension and removal from office of Provincial or Metropolitan Council members 25

(1) In accordance with section 272 of the Constitution, the Mayor, Chairperson or member of a Council shall only be removed from office on the grounds of—

- (a) inability to perform the functions of their office due to mental or physical incapacity; or 30
- (b) gross incompetence; or
- (c) gross misconduct; or
- (d) conviction of an offence involving dishonesty, corruption or abuse of office; or 35
- (e) wilful violation of the law, including a local authority by-law.

(2) Subject to this section, if the Minister has reasonable grounds for suspecting that a Mayor, Chairperson or member of a Provincial or Metropolitan Council— 40

- (a) is unable to perform the functions of his or her office due to mental or physical incapacity; or
- (b) is guilty of any misconduct referenced in subsection (1)(b), (c), (d) or (e);

the Minister shall, by written notice to the Mayor, chairperson or Councillor and a Provincial or Metropolitan Council concerned— 45

- (c) suspend the Mayor, Chairperson or Councillor from exercising all or any of his or her functions in terms of this Act; and
- (d) specify the reasons for the suspension and the nature of the allegations against the Mayor, Chairperson or member of a Council; and
- (e) afford an opportunity to the Mayor, Chairperson or Councillor to respond to the allegation within seven days of receiving the notice.

(3) Any allowance that is payable to Mayors, Chairpersons or member of Council concerned in terms of this Act shall continue to be paid to a Mayor, Chairperson or member of the Council who has been suspended in terms of subsection (2) for so long as he or she is suspended, unless the misconduct in question involves —

- (a) dishonesty in connection with the funds or other property of the Council; or
- (b) serious negligence resulting in the loss of any funds or property of the Council; or
- (c) gross mismanagement of the funds, property or affairs of the Council;

whether or not the Mayor's, Chairperson's or Councillor's responsibility for such dishonesty is shared with other members of the Council or with any employees of the Council.

(4) Not earlier than 14 days after the Minister has suspended a Mayor, Chairperson or member of a Council in terms of subsection (1), and in any event within forty-five days, the Minister shall, if no response is made to a notice in terms of subsection (2)(e), or if that response is not satisfactory to the Minister, cause a thorough investigation where necessary to be conducted with all reasonable dispatch to determine whether sufficient evidence exists for the issue of the removal of the Mayor, Chairperson or Councillor on any of the grounds specified in subsection (1) to be referred to an independent tribunal.

(5) This section applies, with such changes as may be necessary, to any allegation of inability on the part a Mayor, Chairperson or member of Council as the case may be is unable to perform the functions of his or her office due to mental or physical incapacity.

New sections inserted in Cap 29:11

32 Independent tribunals: appointment and procedure

(1) An independent tribunal referred to in section 278(2) of the Constitution shall be constituted whenever the issue of the removal of a Chairperson or Councillor on any of the grounds specified in section xx needs to be referred to it.

(2) An independent tribunal shall consist of —

- (a) a Chairperson appointed by the Minister from a list of at least three and not more than nine registered legal practitioners with at least five years' experience in private or public practice, who shall be nominated by the Law Society of Zimbabwe referred to in section 51 of the Legal Practitioners Act [*Chapter 27:07*] (if the original list consists of fewer than nine nominees, the Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed nine); and

- (b) two other members appointed by the Minister from a list of at least three and not more than nine persons nominated by the Civil Service Commission, who shall be persons experienced in local government administration, whether as former Councillors or as administrators (if the original list consists of fewer than nine nominees, the Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed nine). 5
- (3) If the case to be determined by the tribunal involves financial impropriety, one of the members of the tribunal must be a person registered under the Public Accountants and Auditors Act [*Chapter 27:12*], in which event the Civil Service Commission shall submit to the Minister two lists of nominees, of which one list shall consist of at least three and not more than six persons qualified as provided in subsection (2)(b), and the other list shall consist of at least three and not more than six persons who shall be persons registered under the Public Accountants and Auditors Act [*Chapter 27:12*]; 10 15
- Provided that if either of the original lists consists of fewer than six nominees, the Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed six. 20
- (4) In accepting nominations for appointment to the tribunal in terms of subsections (2) and (3), the Minister shall notify the Law Society of Zimbabwe and the Civil Service Commission of the names of at least one alternate for the office of Chairperson of the tribunal (drawn from the list of nominees for that post) and one alternate for each of the other two appointees of the tribunal (drawn from the list of nominees supplied for those posts) who shall assume the Chairpersonship or membership of the tribunal in case any such office becomes vacant in the course of the tribunal's proceedings. 25 30
- (5) In nominating or appointing members or alternates to a tribunal the Law Society of Zimbabwe and the Civil Service Commission, as the case may be, must be mindful of the requirement that the tribunal should consist of members of both sexes.
- (6) A person shall not be eligible for appointment to an independent tribunal if— 35
- (a) he or she is not a citizen of Zimbabwe ordinarily resident in Zimbabwe; or
- (b) he or she has, in terms of a law in force in any country—
- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or 40
- (ii) he or she has, within the period of five years immediately preceding the date of his or her proposed appointment, been sentenced in any country to a term of imprisonment of six months or more, imposed without the option of fine, and has not received a free pardon. 45
- (7) Members of the tribunal shall be paid such sitting and other allowances from the funds of the Provincial or Metropolitan Council of the member of Council whose removal from office they are considering, at such rate as shall be fixed by the Minister in a statutory instrument: 50

Provided that the Council concerned is entitled (in terms of paragraph 6 of the Second Schedule) to seek from the tribunal an order of reimbursement of all or part of the costs it incurred under this subsection if the member is removed from office.

(8) The head of the Ministry shall provide such secretarial and support services as may be required by a tribunal.

(9) A member of a tribunal may resign his or her office at any time by giving the Chairperson, or the Minister in the case of a Chairperson, at least fourteen days' notice of his or her intention to resign, whereupon the next available person on the appropriate list of alternates shall assume office in his or her stead.

(10) The Minister may, after consulting the Law Society of Zimbabwe and the Civil Service Commission, as the case may be, remove a member from a tribunal on the grounds of—

- (a) inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or any other cause; or
- (b) negligent or improper conduct in connection with the discharge of his or her duties as a member of the tribunal.

(11) On the death of, or the vacation of office by, a member of the tribunal, the next available person on the appropriate list of alternates shall assume office in his or her stead.

(12) The office of a member of a tribunal shall terminate on the day that a determination is made whether to remove a member from office.

(13) In the course of its hearings—

- (a) the tribunal shall be bound by the rules of natural justice, and
- (b) any contempt of the tribunal by any person before the tribunal shall constitute the crime of contempt of court in terms of section 181 of the Criminal Law Code.

(14) Any person aggrieved by the proceedings or decision of the tribunal may appeal to the High Court or take the matter on review to the High Court, but any decision of the tribunal shall stand pending the appeal or review."

33 Amendment of section 19

Part IV ("Meetings and proceedings of provincial councils") of the principal Act is amended by repeal of section 19 and substitution of—

"19 Presiding officer at meetings

Subject to this Part, the Provincial or Metropolitan Chairperson shall preside at all meetings of a Provincial or Metropolitan Council at which he or she is present and, in his or her absence the members present shall elect one of their number to be the Chairperson to preside at that meeting for the province concerned."

34 Amendment of section 20

Section 20 ("Meetings and special meetings of Provincial Councils") of the principal Act is amended by repeal of section 20 and the substitution of the following section—

"20 Meetings and special meetings of Provincial Councils

(1) Each Metropolitan or Provincial Council shall determine the time and duration of its meeting:

Provided that every Provincial and Metropolitan Council shall meet at least once in every three months at such time and place as it may determine.

(2) At least fourteen days before any ordinary meeting of a Provincial or Metropolitan Council or a Metropolitan Council the clerk of the Provincial or Metropolitan Council as the case may be, shall send a notice stating the date, time and place of the meeting and the business to be transacted thereat to each member of the Council concerned and shall display the notice at the places at which and in the manner in which the notices of the Councils are normally displayed or in such other place and manner as may be prescribed.

(3) Every member present at a meeting of Council shall be entitled to one vote on every question before the meeting.

(4) Save as otherwise provided in this Act, any question before a meeting of a Provincial Council or Metropolitan Council shall be decided by resolution passed by a majority of the members present at the meeting and, in the event of an equality of votes, the Chairperson shall cast a decisive vote.

(5) The Provincial Chairperson or the Metropolitan Chairperson may at any time and shall, at the request in writing of no less than one-third of the members of the Council concerned, call a special meeting of a Provincial Council or a Metropolitan Council.

(6) Written notice of any special meeting called in terms or subsection (5) shall be sent by the clerk of the Provincial Council or the Metropolitan Council as the case may be to each member of the respective Council not later than seven days before the meeting and such notice shall specify the subject to be discussed at the meeting.

(7) No subject, other than a subject specified in a notice sent in terms of subsection (6), shall be discussed at any special meeting called in terms of subsection (5).

35 Minutes of proceedings of Councils

(1) Every Council shall cause minutes of its all proceedings to be —

- (a) made in English and in the prescribed form; and
- (b) recorded therein the names of all members attending any meeting and the names of the members voting respectively for or against any matter for which a decision for division is called.

(2) The Chairperson shall ensure that the minutes made in terms of subsection (1) shall be recorded in a book kept for the purpose, or on loose sheets of paper which shall subsequently be bound into a book three months after the close of the financial year.

(3) The Chairperson shall ensure that the minutes of a meeting of Council shall —

- (a) if in order, be confirmed at the same or next succeeding ordinary meeting of the Council; and
- (b) if so approved, be signed by the chairperson of the meeting at which such confirmation occurs; and
- (c) if the minutes are written upon loose sheets of paper, each such loose sheet shall be paginated and initialled by him or her.

(4) A document purporting to be —

- (a) the minutes of a meeting of a Council and signed as provided in subsection (3); or
- (b) a copy or extract from such minutes certified by the clerk as correct; is, on its mere production in a court of law by any person, prima facie proof of the facts set out therein, and all matters relating to the meeting of which the said minutes purport to be the record are presumed to have been done and executed with the due formalities until the contrary is proved.

(5) All minute books referred to in this section shall be kept by the clerk.

(6) The minutes of proceedings of a Council are, at all reasonable times, open to the inspection by any member of the public who may obtain a copy thereof or an extract there from on payment of such fee, not exceeding such amount, as may be fixed by resolution of the Council:

Provided that—

- (i) minutes of proceedings conducted in committee in terms of section 27(2) are not open to inspection;
- (ii) minutes of proceedings of committees relating to any legal proceedings or negotiations to which the Council is or may become a party and the disclosure of which is considered by the committee to be prejudicial to the general interests of the Council are not open to inspection; and
- (iii) where any minutes contain a reference to a document, such document is not open to inspection.

(7) At any meeting of a Council, upon request by a member, the clerk shall record the dissent of such member to any resolution passed by the meeting.

(8) Subject to this section, a Council may prescribe in its Standing Orders the verbatim recording of its proceedings and the manner in which such recordings may be transcribed and maintained as minutes of the proceedings of the Council for the purposes of this section.

(9) The clerk shall distribute a copy of minutes of Council that has been initialled by the chairperson and the clerk to members of Council soon after the meeting in which the minutes were corrected and adopted and in any case on that same day.

(10) The Clerk shall cause minutes of every Council meeting to be uploaded on their website. (11) the Clerk shall submit a copy of the adopted minutes to the Minister.

36 Validity of proceedings of Council

No decision, act or proceedings of a Council are invalid by reason only of the fact that—

- (a) there was a vacancy in the number of members of the Council; or
- (b) a person who was not a member of the Council acted as a member; when the decision was taken or the act was done or authorised or the proceedings took place, as the case may be.

37 Power of Council to invite persons to Council meetings

The chairperson of Council may invite any person—

- (a) to answer questions put before him or her by the Council; or
- (b) to provide expertise or technical assistance on any matter to the Council.

38 Standing Orders

(1) Every Council shall develop rules known as Standing Orders which shall regulate its proceedings with due regard to representativeness and participatory democracy, accountability, transparency and public involvement.

(2) The Minister shall prepare model Standing Orders which Councils may adopt with or without modifications. 5

(3) Standing Orders may provide for—

- (a) the participation in the proceedings of a Council and its committees;
- (b) the appointment, functions and duration of committees and the delegation of functions to them; 10
- (c) the manner in which the powers, privileges and immunities of Council may be exercised and upheld;
- (d) the questioning of Ministers and Deputy Ministers by members of Council;
- (e) a code of conduct for members;
- (f) the exercise of the right of the public to petition a Council; 15
- (g) generally, the regulation and orderly conduct of business and proceedings of Council;
- (h) any other matter that is necessary for the proper conduct of Council business.

(4) The procedures and processes of every Council and its committees, as provided for in Standing Orders, shall— 20

- (a) promote transparency;
- (b) encourage the involvement of members of all political parties in Council and the public;
- (c) be fair and just. 25

(5) The clerk shall, at the first meeting of the Council and where available, provide each member with a copy of the Standing Orders and any other rules or by-laws of the Council.

39 Public access to and involvement in Councils

(1) Every Council shall— 30

- (a) facilitate public involvement in its legislative and other processes and in the processes of its committees; and
- (b) ensure that interested parties are consulted on any matter being considered by Council, unless such consultation is inappropriate or impracticable; and 35
- (c) conduct its business in a transparent manner and hold its sittings, and those of its committees, in public, though measures may be taken to—
 - (i) preserve order in Council proceedings;
 - (ii) regulate public access, including access of the media, to Council meetings and its committees; 40
 - (iii) provide for the searching of persons and, where appropriate, the refusal of entry to Council premises or the removal of any person from the premises; but the measures shall be reasonable and justifiable in an open and democratic society based on openness, justice, human dignity, equality, freedom and the right to access to 45

(2) Subject to subsection (1), if a Council considers that any matter can be more conveniently and advantageously dealt with in privacy, it may at any meeting dissolve itself into committee, and any resolution adopted in committee has full force and effect as a resolution of the Council.

5 **40 Amendment of section 21**

Section 21 ("Quorum at meetings of Provincial Councils") of the principal Act is amended by the repeal of section 21 and the substitution of the following section—

"21 quorum of the Provincial and Metropolitan Provincial Council

10 The quorum of the Provincial and Metropolitan Provincial Council shall consist of 50% of the total membership."

41 Amendment of section 22

Section 22 ("Attendance at meetings of Provincial Councils") of the principal Act is amended by the repeal of section 22 and the substitution of the following section—

"22 Attendance at meetings of Provincial or Metropolitan Council

15 Notwithstanding the provisions of any other enactment but subject to this section, a member of a Provincial or Metropolitan Council, other than the Chairperson of either the Provincial or Metropolitan Council, who is absent without the permission of the Council from three consecutive meetings thereof, including special meetings, constitutes gross misconduct and the matter shall, one week after the next meeting of the Council shall, refer the matter to the Minister for removal of the member from office; unless the Council, at that next meeting, resolves to condone his or her absence."

20

42 Amendment of section 26

25 Section 26 ("Establishment and membership of Provincial development committees") of the principal Act is amended by the repeal of section 26 and substitution of—

"26 Standing committees of Provincial and Metropolitan Council

(1) Subject to this section for the better exercise of its functions, a Provincial Council or a Metropolitan Council may appoint one or more standing committees and vest in the committees such of its functions as it thinks fit.

30

(2) Every Provincial Council and Metropolitan Council shall appoint a finance committee which shall be responsible for regulating the financial affairs of the Provincial or Metropolitan Council concerned.

35

(3) Every Provincial Council and Metropolitan Council shall appoint an environmental management committee which shall be responsible for environmental matters relating to the Provincial or Metropolitan Council.

(4) Every standing committee shall, at its first meeting after the appointment of the members thereto, elect one of its members from the ten persons elected by a system of proportional representation to be Chairperson and one of its members to be deputy Chairperson thereof, and may at any time, if the person elected as Chairperson or deputy Chairperson ceases to be a member of that committee, elect a member to replace him or her.

40

45

(5) A member of a standing committee shall cease to be a member thereof forthwith—

- (a) after the general election; or
- (b) if he or she ceases to be a member of the Provincial or Metropolitan Council.

5

(6) A standing committee shall consist of such number of members, being not less than three, as the Council may determine.

(7) Subject to this subsection no person, other than the members of, and the person tasked to be secretary to, a standing committee and the Chairperson of the Provincial or Metropolitan Council shall be present at a meeting of that standing committee:

10

Provided that if—

- (a) the attendance of any employee of the local authority is required by Chairperson; or
- (b) the Chairperson of the standing committee has invited an employee or other person to attend a meeting in connection with the consideration of any matter; that employee or other person may attend the meeting.

15

(8) If the Chairperson is not a member of a standing committee he or she, or in his or her absence, the deputy Chairperson shall be entitled to attend and to participate in any discussion at a meeting of a standing committee but he or she shall not be entitled to vote on any matter before that standing committee.”.

20

43 New sections inserted in Cap 29:11

The principal Act is amended by the insertion after section 26 of the following sections—

25

“26A Audit committee

(1) Every Provincial Council and Metropolitan Council shall appoint an audit committee.

(2) The Chairperson, the deputy Chairperson of every committee of Council shall not be a member of, or be entitled to attend any meeting, of the audit committee.

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(3) No person other than the members of the audit committee and the external auditors of Council shall attend any meeting of the audit committee:

35

Provided that if the audit committee requires the attendance of any employee or other person at its meeting, that person or other person shall attend the meeting.

(4) Where an employee or any other person fails, without just cause, to comply with any requirement to attend an audit committee meeting in terms of subsection (3), he or she shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

40

44 Functions of audit committee

The functions of the audit committee shall be—

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- (a) to inquire into and report upon the manner in which the finances of the Provincial Council or Metropolitan Council, its assets and human resources are being used; and

- (b) to ascertain whether the funds and assets of the Provincial or Metropolitan Council are applied to the purposes intended and are consistent with any regulations and standing orders issued by the Council, or the Minister, as the case may be; and
- 5 (c) to call for information, explanations and evidence in respect of any matters in respect of which the auditors have made observations; and
- (d) to receive and consider reports of internal and external auditors and make appropriate recommendations to the Provincial or Metropolitan Council; and
- 10 (e) to recommend to the Provincial or Metropolitan Council appropriate methods of investment of moneys, and custody of any other properties of the Council.

(2) The audit committee shall report its proceedings only to the Provincial or the Metropolitan Council, as the case may be:

- 15 Provided that where the Minister requests a report of such committee, the committee shall comply with such request.

(3) The Provincial or Metropolitan Council shall pay due regard to any recommendation made by the audit committee in terms of subsection (1) (e), but shall not be obliged to act in accordance with any such recommendation.

20 **45 Development committees**

(1) Every Council shall appoint a development committee consisting of such number of members of the Council as the Council may determine.

(2) The functions of a development committee are—

- (a) to investigate the province's gross domestic product;
- 25 (b) to make recommendations to the Council as to matters to be included in the annual development plan and other long-term plans for the province;
- (c) to assist the Council in the preparation of the annual development plan for approval by the Council;
- (d) to monitor the implementation of the annual development plan and other longterm plans for the province;
- 30 (e) to exercise such other functions in relation to the annual development plan and other long-term plans of the province as may be assigned to it from time to time by the Council.

46 Environment committees

35 (1) Every Council shall appoint an environment committee consisting of such number of members as the Council may appoint.

(2) The environment committee shall be responsible for overseeing environmental matters relating to the province and for that purpose, shall perform the following functions—

- 40 (a) recommending to the Council measures for the management and protection of the environment by local authorities in the province;
- (b) recommending to the Council ways of implementing environmental measures which the Council considers to be undertaken in terms of the law;
- 45 (c) preparing and recommending to Council environmental plans required in terms of the Environmental Management Act [*Chapter 20:27*] and

monitoring their implementation by the local authorities in the Council area;

- (d) ensuring that any mining activities within the province are carried out in strict compliance with the Environmental Management Act [*Chapter 20:27*] as well as the Mines and Minerals Act [*Chapter 21:05*] to the extent that it provides for matters relating to the environment;
- (e) generally ensuring co-operation with the Environmental Management Authority in compliance with the Environmental Management Act [*Chapter 20:27*].

47 Amendment of sections 27-30

The following sections of the principal Act are amended by the repeal —

- (a) of section 27 (“Chairmen of Provincial development committees”);
- (b) of section 28 (“Functions of Provincial development committees”);
- (c) of section 29 (“ Meetings and quorum of Provincial development committees); and
- (d) of section 30 (“Joint meetings of Provincial Councils and Provincial development committees”).

48 Amendment of section 31

Section 31 (“Other committees of Provincial Councils”) of the principal Act is amended by the repeal of section 31 and substitution of—

“31 Special committees

(1) A special committee may at any time be appointed by a Provincial or Metropolitan Council subject to the following provisions—

- (a) that committee shall be appointed for a specific task and once that committee has submitted a report thereon it shall be dissolved unless reconstituted by the province; or Metropolitan Council for further investigation or consideration in connection with the original task;
- (b) that committee shall be composed of members of the Provincial Council or Metropolitan Council as the case may be, and persons who are not members of Provincial or Metropolitan Council and any such member of that special committee shall be entitled to exercise a vote —
 - (i) the Chairperson of that committee shall be a member of the Provincial Council or Metropolitan Council, which ever the case may be;
 - (ii) the quorum at any meeting of that committee shall be formed by such number of members as the Provincial or Metropolitan Council may determine;
 - (iii) no powers shall be delegated by the Provincial or Metropolitan Council to that committee.

(2) A special committee shall consist of such number of members, being not less than three, as the Provincial or Metropolitan Council may determine.

(3) A special committee—

- (a) at its first meeting after the appointment of the members thereto—

- (i) shall, subject to subsection (1)(c), elect one of its members to be Chairperson; and
- (ii) may elect one of its members to be deputy Chairperson; and
- 5 (b) may at any time, if the person elected as Chairperson or deputy Chairperson ceases to be a member of the special committee, elect a member to replace him or her.

(4) No person, other than the members of, and the secretary to, a special committee appointed in terms of subsection (1) and the clerk, shall be present at a meeting of that committee:

Provided that if the Chairperson of that committee has invited an employee of a local authority or other person to attend a meeting in connection with the consideration of any matter, that employee or other person may attend the meeting.”.

15 **49 General provisions applicable to all committees**

(1) Every Council shall elect a chairperson of committee in accordance with section 271 of the Constitution.

(2) The chairperson of a Council shall not be a member of the committees of the Council.

20 (3) A majority of the total membership of a committee forms a quorum at any meeting of the committee.

(4) If, at any meeting of a committee, the chairperson of the committee is absent, the members present shall elect amongst themselves the chairperson, in accordance with subsection (1), to act as chairperson of the meeting.

25 (5) A Committee may invite appropriate professional and technical persons to provide expertise or technical assistance on any matter before committee.

(6) A committee shall hold its first meeting on such date and at such place as the Council may fix and thereafter the committee shall meet for the dispatch of business and adjourn, close or otherwise regulate its meetings and procedure as it considers fit, subject to the provisions of any Standing Orders or ordinances of the Council.

(7) Subject to subsection (9), no person, other than—

- (a) the members of, and the secretary to, a committee and the clerk; and
- (c) any person who the chairperson of the committee has invited to attend a meeting of the committee for the purpose of assisting the committee with any matter before the committee; shall be present at a meeting of a committee:

Provided that if—

- (i) the attendance of any employee of the Council is required by the committee; or
- 40 (ii) the chairperson of the committee has invited an employee or other person to attend a meeting in connection with the consideration of any matter; that employee or other person shall attend the meeting.

(8) Any question before a meeting of a committee shall be determined by a resolution passed by a majority of the members at the meeting at which a quorum is present and, in the event of an equality of votes, the chairperson of the committee has a casting vote in addition to the deliberative vote:

Provided that the person presiding shall not have a casting vote where the question concerns the rescission or alteration of a previous resolution of the committee.

(9) Every committee shall report its proceedings to the Council at the next Council meeting. (10) A Council shall not take any action on any matter relating to the functions of any committee until the committee concerned has had an opportunity to consider and report upon the matter to the Council. 5

(11) Unless it has already been ratified by the Council, a resolution passed at a meeting of a committee may be rescinded or altered at any subsequent meeting of the committee.

(12) As soon as possible after the end of every financial year, the Council shall review the work of each standing committee during the previous year and may reappoint members of the committees or appoint different members in terms of this Part. 10

(13) A member of a committee ceases to be a member forthwith after the dissolution of the Council. (14) Subject to this Part, sections 18, 20, 21 and 22 apply, mutatis mutandis, to any committee in the same way as those sections apply to a Council. 15

PART VI

50 Staff of councils

Interpretation in Part VI In this Part, “senior officer” means a clerk, a counsel or such other employee as may be prescribed.

51 Appointment of clerk and other staff 20

(1) A Council shall appoint a suitable person to be the clerk and any other staff of Council.

(2) The clerk shall be appointed for a period of not more than six years renewable for one term upon assessment of the Clerk’s performance by the Council.

52 Functions of clerk 25

(1) The clerk shall be responsible for—

- (a) developing and implementing strategic plan for the Council;
- (b) the oversight of the proper administration of Council business; and
- (c) managing the operations and property of the Council; and
- (d) supervising and controlling the activities of other senior officers and employees of the Council in the course of their employment. 30

(2) For the purposes of subsection (1), the clerk shall, in addition to any other duties that may be assigned to him or her by the Council—

- (a) direct, supervise, appraise, develop and report on the work and conduct of all staff of the Council and take appropriate measures to ensure efficiency and discipline among all the staff members; 35
- (b) where so authorised by the Council, sign orders, notices, or any document requiring authentication or execution on behalf of the Council;
- (c) recommend to the Council measures necessary to safeguard the finances and assets of the Council; 40
- (d) take such steps as he or she considers to be necessary for the purpose of giving effect to any resolution of the Council;
- (e) account to the Council for the performance of any tasks entrusted through him or her to any member of staff of the Council;

- (f) make such recommendations to the Council or any committee of the Council as he or she considers to be necessary or desirable to improve the operations of the Council or committee concerned;
- (g) introduce, implement and monitor adequate control systems;
- 5 (h) be responsible for the effectiveness and efficiency of the organisation of the Council and, where necessary, the co-ordination and integration of its activities and, for such purposes, may, after any necessary consultations, inspect, inquire into and investigate the working and administration of any department or section of Council either personally or through any
- 10 person authorised by him or her:

Provided that—

- (i) nothing in this subsection shall be construed as derogating from the personal responsibility of any head of department for the proper, efficient and effective management of that department;
- 15 (ii) where a head of a department disagrees with any directive of the clerk, he or she shall carry out such directive and record any reservations he or she may have, in writing, and lodge them with the clerk and the chairperson of the Council;
- (ii) where a head of department lodges any reservation in terms of proviso (ii), the clerk shall lodge a response, in writing, with the
- 20 chairperson of the Council.

(3) It shall be the responsibility of the clerk to recommend to the Council appropriate candidates, having regard to the functions of the positions, for employment by the Council as employees in such positions.

- 25 (4) The clerk may delegate to any senior officer or other employee of the Council any functions conferred or imposed upon him or her in terms of this Act, and such employee shall exercise the powers or carry out the duties in accordance with such directions as the clerk may give him or her.

(5) The clerk shall be the accounting officer for the Council.

30 **53 Counsel**

(1) Every Council shall appoint a counsel who shall be responsible for—

- (a) the provision of legal advice to members of the Council;
- (b) drafting legislation and any other legal documents on behalf of the Council.

- 35 (2) Whenever the office of the clerk is vacant or the clerk is absent or incapacitated or fails to act, the counsel shall perform the functions conferred upon the clerk by this Act or any other law or by any resolution of the Council.

(3) The Council may appoint such deputy counsel as may be necessary for the assistance of the execution of the functions of counsel.

Conditions of service of clerk and staff of Council

- 40 The conditions of service of the clerk and other staff shall be fixed by Council after consultation with the Minister responsible for finance.

54 Conduct of staff of Councils

(1) No employee of Council may obey an order that is manifestly illegal.

- 45 (2) No person employed by a Council shall be an office bearer of any political party and, in the exercise of his or her functions, no employee shall—

- (a) act in a partisan manner;
- (b) further the interests of any political party or cause;
- (c) prejudice the lawful interests of any political party or cause;
- (d) violate the fundamental rights or freedoms of any person.

(3) In addition, sections 17, 18 and 19 apply *mutatis mutandis* to senior officers of the Council. (4) For the avoidance of doubt, all persons employed by the Council are public officers but do not form part of the Public Service. 5

55 Disqualifications for appointment as officers or employees of Councils

(1) Any person who approaches any member or senior officer of a Council with a view to securing any of their support in favour of his or her appointment as an officer or employee of the Council concerned is disqualified from such appointment. 10

(2) A person who is convicted of any of the following offences—

- (a) extortion, bribery or a contravention of the Prevention of Corruption Act [Chapter 9:16]; or (b) theft or receiving stolen property knowing it to have been stolen; or 15
- (b) fraud, forgery or uttering; or
- (c) possession or supply of any habit-forming or other drug in contravention of any enactment; or
- (d) any offence for which he or she is sentenced to imprisonment for a period of six months or more without the option of a fine, whether or not any part of such imprisonment is suspended; or 20
- (f) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), (b), (c) or (d); is disqualified from appointment as a senior officer or employee of any Council for a period of three years from the date of expiry of the period of imprisonment or of the period for which the imprisonment has been suspended. 25

56 Delegation of powers by Councils

A Council may delegate, subject to such conditions as it may impose, to a senior officer or employee of the Council such of the powers vested in it by or under this Act or any other law as it considers to be necessary or desirable and may in like manner amend or withdraw any such delegation: 30

Provided that—

- (i) the amendment or withdrawal of any delegation shall not invalidate anything done in pursuance of a decision lawfully taken by the senior officer or employee before the date of such amendment or withdrawal; 35
- (ii) the delegation of any powers in terms of this section shall not preclude the Council from itself exercising the powers so delegated and the Council may amend or rescind any decision of a senior officer or employee in the exercise of the powers so delegated. 40

57 Exercise of legislative functions by Councils

(1) In this part “power to make law” means to propose legislation for adoption by Parliament in consultation with all stakeholders with respect to any matter within the competence of the Councils jurisdiction) (2) Subject to sections 117(2)(c) and 270(1) (f) of the Constitution and the relevant Act of Parliament a Council has power to make legislation for its province with regard to the matters specified — 45

- (a) in Part A of the Schedule to the extent that such matters are not already covered by or in conflict with national legislation;
- (b) in Part B of the Schedule, to the extent that such matters are not covered by or in conflict with local authorities' legislation.

5 (3) In exercising its legislative functions, a Council is bound by the Constitution.

58 Exercise of power to legislate by Council

(1) In exercising its legislative function, a Council may —

- (a) consult all relevant stakeholders until adoption by Council of proposed legislation;
- 10 (b) consider, and adopt a policy behind legislative contemplated;
- (c) draft proposed legislation;
- (d) debate the proposed legislation in Council;
- (e) adopt proposed legislation;
- 15 (f) submit a proposed legislation to the Minister for presentation before Parliament.

(2) Every Council shall prescribe in regulations, procedure and mechanisms —

- (a) to ensure that all executive organs of state in the province are accountable to it; and
- (b) to maintain oversight of—
- 20 (i) the exercise of executive authority in the province, including the implementation of legislation; and
- (ii) any organ of state in the province.

(3) Every Council shall ensure that, before coming up with every proposed legislation, there is stakeholder consultation which may include—

- 25 (a) posting notices on all notice boards of Councils and all relevant local Authorities and public places; or
- (b) holding public consultative meetings in all relevant areas, targeting all social groups within the Council jurisdiction; or
- (c) advertising through various media platforms; or
- 30 (d) any other method the effectiveness of which can be demonstrated,

(4) Legislation proposed by a Council shall have no effect until approved by Parliament and published in the *Gazette*.

59 Privileges of Council members

Members of Council—

- 35 (a) have freedom of speech in Council and committee meetings, subject to its rules and Standing Orders; and
- (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—
- (i) anything that they have said in, produced before or submitted to the Council or any of its committees; or
- 40 (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its committees.

(2) Other privileges and immunities of Council members may be provided for in standing orders.

60 Introduction of proposed legislation

(1) Subject to subsection (2), only members of Council, may introduce proposed legislation in the Council.

(2) Only a member of the Council who is responsible for financial matters in the province may introduce a money Bill in the Council legislature. 5

Proposed financial legislation

(1) A Proposed financial legislation may be introduced in the Council if it is necessary to—

- (a) appropriate money;
- (b) impose provincial taxes, levies, duties or surcharges; 10
- (c) abolish or reduce, or grant exemptions from, any provincial taxes, levies, duties or surcharges;
- (d) authorise direct charges against a Provincial Revenue Fund: 5

Provided that taxes, levies, duties or surcharges introduced by Council in terms of this subsection shall not include— 15

- (i) income tax;
- (ii) value added tax;
- (iii) general sales tax;
- (iv) customs duty;
- (v) rates on property; 20
- (vi) royalties collected by local authorities;
- (vii) any other tax as may be prescribed.

(3) Standing Orders or rules of Council shall provide for the procedure by which a proposed financial legislation may be amended.

61 Adoption of proposed legislation 25

Where Council adopts proposed legislation the chairperson of Council shall assent to the proposed legislation and refer the proposed legislation to the Minister who shall without delay cause the proposed legislation to be gazetted and laid before Parliament.

62 Conflicts between national and Council legislation

(1) Where Council legislation is in conflict with national legislation, the latter shall take precedent over the former. 30

(2) If there is a dispute as to whether Council legislation prevails over national legislation, the matter shall be determined upon application to the High Court.

63 Amendment of sections 36 and 37

The following sections of the principal Act in Part VIII (Abolition and alteration of provincial councils) are amended by the repeal— 35

- (a) of section 36 (“Abolition of Provincial Councils”); and
- (b) of section 37 (“Effect of abolition or alteration of areas of Provincial Councils”).

64 New part inserted in Cap 29:11

Part VIII (“Abolition and alteration of provincial councils”) of the principal act is amended by the insertion after section 37 of the following sections— 40

PART VIIIA

FINANCIAL PROVISIONS RELATING TO PROVINCIAL AND
METROPOLITAN COUNCILS, REPORTS AND EXEMPTIONS

65 Interpretation in this part

5 (1) When used in any books referred to in subsection (1), the following terms shall have the meanings assigned thereto as follows —

“fund” means any amount set aside, either for a specific purpose or for general purposes, and invested solely —

- 10 (a) in interest-bearing advances to one or more funds or accounts of the Council concerned; or
- (b) partly as mentioned in paragraph (a).

“provision” means any amount set aside for the purpose of meeting, either in whole or in part, a known liability the amount of which cannot be calculated with substantial accuracy;

15 “reserve” does not include any amount retained by way of providing for any known liability.

(2) For the purposes of subsection (3) —

20 “document of trust” means a document in terms of which a donation or bequest of any moneys is made in favour of the Provincial or Metropolitan Council and directions are included controlling the use by the Council of such moneys.

66 Sources of income

Provincial or Metropolitan sources of funds include the following —

- 25 (a) consolidated Revenue Fund as provided for in section 301 of the Constitution;
- (b) taxes, levies and duties other than income tax, value-added tax, general sales tax, rates on property or customs duties in their respective provinces a certain amount and royalties collected by local authorities;
- 30 (c) flat — rate surcharges on any tax, levy or duty that is imposed by national legislation, other than corporate income tax, value added tax, rates on property or customs duties;
- (d) fines;
- (e) administration fees;
- (f) donation; and
- 35 (g) any other source approved by the Minister.

67 Fiscal equalisation model

(1) The Minister responsible for finance shall prescribe a fiscal equalisation model that takes into consideration, among others, the following parameters for purposes of appropriation —

- 40 (a) total amount to be allocated as declared in the national budgets provided for in section 301(3) of the Constitution;
- (b) poverty index (considered as the equivalency of the poverty equivalent rate);
- (c) population size;

- (d) population density;
 - (e) infrastructure quality and deficit;
 - (f) gross domestic products of the Council and local authorities;
 - (g) the local revenue base;
 - (h) the local tax base of each Council and local authorities; 5
 - (i) the need to provide basic services.
- (2) Parliament in its appropriation of funds subject to parameters laid down in subsection (1) may provide for —
- (a) capital grants to Councils and local authorities; and
 - (b) other allocations on prescribed conditions. 10

68 Allocation of revenue between Provincial and Metropolitan Councils from the Consolidated Revenue Fund

- (1) An independent body to be called an Inter-Governmental Fiscal Transfer task force, to determine and review a formula for distribution of the fiscal transfers.
- (2) The Minister in consultation with the Minister of Finance will appoint 15 members to an Inter-Governmental Fiscal Transfer task who shall be experts in the fields of finance, economics, law, engineering, public administration and any other profession as the Minister sees fit.

69 Functions of the task force

- The functions of the task force shall be to— 20
- (a) develop a formula to ensure equitable allocation of capital grants to Provincial and Metropolitan Councils taking into consideration the GDPs of every province in fulfillment of the equalization principle;
 - (b) periodic review of the disbursement formula; and
 - (c) use Provincial asset database in making recommendations for allocations. 25

70 Fiscal transfers

- (1) Fiscal transfers shall be composed of general purpose and capital grants, the capital grants will be specifically for capital projects whilst the general purpose transfers will be directed to any other recurrent expenditure.
- (2) The general-purpose transfers shall not exceed more than 30% of the inter-governmental transfers. 30
- (3) The fiscal transfers shall be disbursed by the Minister responsible for finance.

71 Financial year

Financial year of Provincial Council and Metropolitan Council shall be for a period of 12 months to end on the 31st of December each year. 35

72 Books and accounts

- (1) A Provincial or Metropolitan Council shall cause to be kept such books of accounts as may be necessary to maintain a true and proper record of all matters relating to the financial transactions of the Council, including, without prejudice to the generality of the foregoing, all moneys received and paid, income earned or accrued but not received, and expenditure incurred but not paid, clearly showing the assets and liabilities of the Council. 40

(2) The books referred to in subsection (1) shall be kept on the basis of double entry accounting principles in such a manner as to facilitate the preparation of—

- 5 (a) such statement of financial positions as may be required by or under this Act or any other law, which shall clearly distinguish between assets and liabilities; and
- (b) statement of comprehensive income and or financial performance accounts; and
- (c) such other accounts as the Council is required to keep in terms of this section.

10 (3) The books referred to in subsection (1) shall be kept by the Clerk in the office of the Council and shall not be removed except by leave of the Council or by order of a competent court.

(4) The Council shall—

- 15 (a) prepare a statement of financial position which reflects a true and fair view of the state of affairs of the Council;
- (b) ensure that the statement of financial positions and statement of comprehensive income and or financial performance accounts referred to in subsection (2) show a summary of the transactions, under separate headings, of funds and reserves unless such a summary is shown separately as an annexure thereto.

73 Books and records to be prima facie evidence

In any proceedings for the recovery of moneys due and payable to a Council, the books and records of the Council or any extract therefrom which purports to have been certified by the Clerk or other officer authorized thereto by the Council, shall be
25 *prima facie* evidence of the amounts so due.

74 Estimates

Before the expiry of any financial year the finance committee shall draw up and present for the approval of the Council estimates in such detail as the Council may require of the income and expenditure on revenue and capital accounts of the Council
30 for the next succeeding financial year:

Provided that the estimates were done in consultation with the Council and with the people in the provinces and districts concerned.

(2) When the estimates presented in terms of subsection (1) have been adopted by the Council and signed by the Chairperson of the Council, the Council shall ensure
35 that—

- (a) copies of the estimates are forthwith made available for inspection by the public; and
- (b) three copies of the estimates are forwarded within two months to the Minister for his approval.

40 (3) The accounting authority for Provincial and Metropolitan Councils shall submit to the Minister, at least sixty days or any other period approved by the Minister before the start of the financial year, a budget of estimated revenue and expenditure for that financial year and an annual plan relating to that Provincial or Metropolitan Council, for approval by the Minister.

45 (4) Copies of the approved budget in terms of subsection (1) shall be available for purchase by any person at such charge as may be fixed by the Council:

Provided that the charge fixed by the Council shall not exceed such amount, if any, as may be prescribed.

(5) A copy of the approved budget shall be sent to the Provincial Minister of State for their information.

(6) In any financial year supplementary estimates may be drawn up and presented in the manner specified in this section in respect of further income and expenditure for that financial year not provided or inadequately provided for in the estimates and subsections (1) and (4) shall apply in relation to such supplementary estimates. 5

(7) A Council which is established after the date of commencement of this Act shall, as soon as possible after its establishment, draw up and present at a meeting of the Council estimates of income and expenditure on revenue and capital accounts of the Council for the first financial year. 10

(8) Subject to subsection (8), a Council shall not expend any moneys unless such expenditure has been covered by estimates or supplementary estimates approved in terms of this section. 15

(9) The Chairperson of the Council may authorise expenditure in consultation with the Minister which—

- (a) has not been foreseen or provided for in terms of this section; and
- (b) in his opinion cannot, without detriment to the interests of the Council, be postponed: 20

Provided that such expenditure shall be reported at the next meeting of the finance committee and this section shall apply, *mutatis mutandis*, as though the moneys had not yet been expended.

75 Banking account 25

A Council shall open in its name with a commercial bank registered in terms of the Banking Act [*Chapter 24:01*] such banking account or accounts as it may consider necessary.

76 Borrowing powers

(1) Subject to this Act, a Council may borrow money on approval by the Minister in consultation with the Minister of Finance in terms of subsection (5) for approved projects spanning more than one local authority. 30

(2) A Council shall not borrow money in terms of subsection (5) unless—

- (a) a resolution to borrow the money has been passed by a majority of the total membership of the Council chairman, as the case may be, has not exercised a casting vote; and 35
- (b) the borrowing power has not been cancelled in terms of subsection (8);
- (c) the Council complies with any conditions fixed by the Minister in terms of subsection (4).

(3) Whenever a Council has resolved in terms of paragraph (a) of subsection (2) to borrow money it shall— 40

- (a) give notice in two issues of a newspaper, stating—
 - (i) the general purposes for which moneys are to be borrowed and the amount of the money required to be borrowed therefor; and

- (ii) that any objections which stakeholders wish to make must be lodged with the clerk within such period, being not less than twenty-one days from the date of the last publication of the notice, as may be specified therein; and
- 5 (iii) that details of the proposals may be inspected at the office of the Council; and
- (b) make available to stakeholders such information on the proposals as it considers necessary; and
- (c) make application to the Minister, not earlier than the date referred to in subparagraph (ii) of paragraph (a) before which objections must be lodged, for authority in terms of subsection (4) to borrow the money; and
- 10 (d) submit to the Minister with any application made in terms of paragraph (c) any objections which have been received before the date referred to in that paragraph, together with the comments of the Council thereon.
- 15 (4) On receipt of an application in terms of paragraph (c) of subsection (3) the Minister may approve the project in whole or in part and grant the Council authority to borrow the moneys applied for, either in whole or in part, subject to such conditions as he may impose, including, without derogation from the generality of the foregoing, a condition limiting the period of validity of such authority.
- 20 (5) Where a Council has the necessary borrowing power, it may resolve to raise the money from the approved sources by the Minister of Finance.
- (6) The Council shall, within three months of the end of each financial year, prepare and submit to the Minister a statement showing the borrowing powers which have not been fully utilised.
- 25 (7) Where a Council has obtained a borrowing power which it has not exercised, the Minister may, after giving the Council concerned not less than twelve months' notice of his intention to do so, cancel that borrowing power, either wholly or, if the borrowing power is by nature divisible, in respect of any portion thereof.

77 Security for loans

- 30 (1) All loans made to a Council, whether before or after the date of commencement of this Act, shall be secured and charged upon the assets and the income of the Council and all securities granted by the Council in respect of such loans shall rank equally without priority.
- (2) It shall be duty of the Council to ensure that any sum due by it on account of interest on any loan or the repayment of any loan by instalments is paid on time.
- 35

78 Illegal borrowing

If a Council borrows any money in contravention of this Act—

- 40 (a) all members of the Council who were present at the meeting at which the resolution to borrow the money was passed and who did not record their dissent; and
- (b) all members of the Council who otherwise purported to authorize the borrowing of money;

shall be jointly and severally liable to repay the money so borrowed and all interest payable thereon, and the amount may be recovered from such members by action in any competent court:

45 Provided that the member of the Council shall not be liable under this section if it is proved that—

- (a) he did not know of the contravention; and
- (b) his lack of knowledge was not the result of a failure on his part to exercise reasonable care in the matter.

79 Repayment of loan

A Council shall, provide annually for the repayment of loans by— 5

- (a) sinking funds; or
- (b) equal fixed instalments of principal and interest; or
- (c) equal fixed instalments of principal; or
- (d) such other method as the Minister may approve.

80 Sinking fund 10

(1) Whenever any moneys are borrowed by a Council and are repayable at the end of a fixed period, the Council shall, unless otherwise directed by the Minister—

- (a) establish a sinking fund for the repayment of each loan; and
- (b) subject to this section, pay every year into such sinking fund from its general revenues such equal annual instalments as will, with accumulations in the way of compound interest, be sufficient to pay off the loan concerned within the period for which it was borrowed. 15

(2) The annual instalments payable in terms of subsection (1) into the sinking fund shall—

- (a) unless otherwise directed by the Minister, commence within twelve months from the date on which— 20
 - (i) the moneys were borrowed; or
 - (ii) the work or purpose for which the moneys were borrowed was completed;

as the Council may determine; 25

- (b) be computed on the basis of accumulating interest at an assured rate equal to the interest rate payable on the moneys borrowed less the administration fee and less one and one-half per centum per annum.

(3) If the average rate of interest earned by the sinking fund established in terms of subsection (1) is— 30

- (a) less than the assured rate, the Council shall make such increased payments each year to the sinking fund as will cause the sinking fund to be sufficient for the purpose;
- (b) more than the assured rate, the excess of earnings over the assured rate shall be refunded to the general revenues of the Council. 35

(4) The Council shall invest the moneys in the sinking fund with the approval of the Minister, in advance for capital projects for which the Council has borrowing powers.

81 Capital development fund

A Council shall establish one or more capital development funds from which moneys— 40

- (a) for the purpose of financing capital expenditure; or
- (b) for the creation or replacing of assets appropriate to the function or functions for which the capital development fund was established:

Provided that any moneys in the capital development fund which are not immediately required for advances in terms of this section shall be invested in a manner specified in section **;

5 (2) There shall be paid into the capital development fund or, where more than one capital development fund is being operated, into the appropriate capital development fund—

- (a) such sums of money as the Council may from time to time determine; and
- 10 (b) the capital sum due in respect of repayments of advances made from that fund; and
- (c) the interest payable on advances made from that fund which shall not be less than such rate as may be fixed by the Minister from time to time; and
- (d) the proceeds received by the Council from the sale of any asset of a capital nature after the deduction from such proceeds of—
- 15 (i) the repayment of any loan outstanding in respect of that asset; or
- (ii) the payment into a sinking fund of a sum which will, with accumulations in the way of compound interest, be sufficient to redeem by due date the loan outstanding in respect of that asset:

20 Provided that the net proceeds of the sale of immovable property with the consent of the Minister, be withheld and applied to any purpose related to immovable assets;

and

25 (e) amounts provided in the revenue estimates for the purchase of any plant, equipment or vehicle, the cost of which will exceed ten thousand dollars provided that the Council the procedure laid out in the Public Procurement and Disposal of Assets Act

(3) Where an advance has been made in terms of subsection (1)—

- 30 (a) the advance shall be deemed to be due and owing to the capital development fund from which it was made and shall be repaid thereto over a period fixed by reference to the estimated life of the asset concerned; and
- (b) the amount of the advance, the period of repayment thereof which shall not exceed thirty years, the interest rate and the conditions of repayment shall be such as the Council, subject to subsection (2), may determine.

35 (4) Where a Council is operating one or more capital development funds and has made by-laws regulating the operations thereof—

- (a) those by-laws shall apply; and
- (b) subsections (1), (2) and (3) shall not apply.

82 Revenue reserves

40 (1) A Council may establish one or more revenue reserves for general or specific purposes.

(2) There shall be appropriated to the revenue reserves of a Council such amounts as the Council may determine to transfer from accumulated revenue surpluses or from current revenue.

45 (3) A revenue reserve shall not, except upon a resolution passed by not less than two thirds of the total membership of the Council voting in favour, be used or applied in any manner other than—

- (a) for the purpose for which such reserve was established; or
- (b) by way of transfer to the capital development fund.

83 Investment of moneys

(1) If a Council has in any fund or account moneys which are not immediately required for the payment of expenditure payable from that fund or account, then, unless otherwise provided in this Act or any other law, the Council shall hold such moneys as balances on current account with a commercial bank or shall invest them in one or more of the following ways—

- (a) balances or deposits with, or bills issued by, any person registered in terms of the Banking Act [*Chapter 24:01*];
- (b) Treasury bills;
- (c) locally registered securities which are issued by—
 - (i) the State or a municipal Council; or
 - (ii) a statutory corporation established by or in terms of a law in force in Zimbabwe;
 or which are guaranteed by the State;
- (d) deposits with a commercial bank;
- (e) shares in or deposits with a building society registered in terms of the Building Societies Act [*Chapter 24:02*];
- (f) savings certificates issued in terms of the Savings Certificates Act [*Chapter 22:12*];
- (g) temporary advances to a capital account for a purpose for which the Council has borrowing power, pending the raising of the necessary loan;
- (h) temporary advances to a consolidated loans fund operated by a Council;
- (i) loans to local authorities within its province;
- (j) such other manner as the Minister and the Minister responsible for finance may approve.

(2) Where any investment has been made in terms of subsection (1)—

- (a) any interest earned and any benefit received on the realization of the investment shall be credited to the fund or account from which the investment was made; and
- (b) any loss incurred on the realization of the investment shall be debited to the fund or account from which the investment was made.

(3) If a Council has accepted any moneys in trust by virtue of a document of trust which directs how such moneys shall be invested or dealt with, the Council shall invest or deal with such moneys as directed by that document.

84 Elimination or reduction of accumulated deficit

(1) If the final accounts of a Council for any financial year reveal an accumulated deficit on the revenue account of the Council, and the Council has not provided to the satisfaction of the Minister for the elimination or reduction of such deficit, the Minister responsible for finance, after giving the Council an opportunity to submit any representations it may wish to make on the matter, may direct the Council to take such action as he or she considers necessary within a period specified by him or her.

(2) If a Council fails to comply with a direction made in terms of subsection (1) within the period specified in terms of that subsection, the Minister responsible

for finance may direct that any funds allocated to the Council by Parliament shall be applied directly to the reduction or elimination of the deficit.

85 Guarantees of loans to officers and employees

(1) Subject to regulations made in terms of section 72, a Council may undertake to guarantee, on such terms and conditions as it may fix, the repayment of a loan made to an officer or employee or to such an officer or employee and his or her spouse jointly—

- (a) by a building society; or
- (b) by any banking institution of fund recommended by the Local Authorities Board; for the purpose of purchasing land and building a dwelling thereon or of building a dwelling on land owned by the officer or employee or his or her spouse or the officer or employee and his or her spouse jointly or of purchasing land and an existing dwelling thereon or of purchasing a dwelling.

(2) A Council may purchase any property in respect of which it has given a guarantee referred to in subsection (1) where it considers that the circumstances are such that it is necessary to purchase such property in order to protect the interests of the Council.

86 Writing-off of bad debts

A Council may write off amounts, owing to the Council by any person if—

- (a) the Council considers that such amounts are irrecoverable; or
- (b) in the opinion of the Council the difficulties, disadvantages or costs of collection thereof outweigh the value thereof.

87 Monitoring and Evaluation

The Provincial Council shall be monitored and evaluated by a monitoring and evaluation team comprising of technocrats from various disciplines appointed by the Minister bi-annually whenever necessary.

88 Appointment of auditors

(1) For the purpose of an audit, the Provincial and Metropolitan Council shall—

- (a) produce to the auditor all relevant books, papers, writings and minute books in its possession; and
- (b) not later than ninety days after the end of each financial year or such later date as the Minister may approve financial statements for audit.

(2) The Auditor-General or any appointee made by the Auditor General shall audit the annual financial statements of Provincial and Metropolitan Councils.

(3) The Auditor General shall return the audited statements to the accounting officer of the Provincial and Metropolitan Councils within sixty days of receipt thereof.

(4) The auditor shall transmit the audited accounts, together with his report to the clerk who shall submit it to the Council at its next meeting and upon receipt of the audit report from the clerk, the Provincial or Metropolitan Council shall take note of the report and consider it for adoption.

(5) A copy of the final accounts, together with the auditor's report, shall be kept by the clerk at the office of the Council and shall be open to inspection by any person during office hours, and any person may take extracts from any of those documents and may obtain copies thereof at such charge as may be fixed by the Council, which shall not exceed such amount, if any, as may be prescribed.

(6) The Council shall, within fourteen days after the final accounts have been adopted submit together with the auditor's report to the Minister.

89 Audit of Provincial and Metropolitan Councils accounts

(1) Subject to this Act the Auditor General shall audit the accounts of the Provincial Councils and Metropolitan Councils.

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(2) The accounts kept by the Provincial and Metropolitan Councils shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Provincial Council or the Metropolitan Council whichever the case may be and to the Minister on the statement of accounts prepared in terms of subsection (2), and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Council affairs.

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(4) In addition to the report referred to in subsection (3), the Minister may require the Provincial Council or the Metropolitan Council whichever the case may be, to obtain from its auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the Council's operations, funds and property as the Minister may consider expedient, and the Council shall forthwith comply with any such requirement.

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90 Internal auditor of the Provincial and Metropolitan Councils

(1) The Provincial and Metropolitan shall appoint an internal auditor who shall report functionally to the; audit committee and administratively to the clerk.

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(2) The functions of the internal auditor shall be—

(a) to monitor the financial administration and procedures of the Provincial or Metropolitan Council to ensure that—

(i) proper accounting and bookkeeping transactions and procedures are carried out; and

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(ii) proper accounting records are maintained; and

(iii) adequate, effective, efficient and transparent systems of financial, governance, risk management and internal and controls are maintained; and

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(iv) the assets of the Council are properly accounted for; and

(v) all instructions and directives issued in terms of section 6 of the Public Finance Management Act [*Chapter 22:19*] are complied with; and

(vi) to evaluate and improve the effectiveness of governance, risk and internal controls; and

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(vii) to check on compliance to rules and regulations; and

(viii) to assess the effectiveness of any projects undertaken by the Provincial and metro Council through regular monitoring and evaluation of projects and programmes;

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(ix) to assess the effectiveness of any projects undertaken by the Provincial or Metropolitan Council.

(3) In the performance of his functions, the internal auditor—

(a) shall have free access at all reasonable times to any records, books, vouchers, documents and resources under the control of the Provincial or Metropolitan Council; and

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- (b) shall have direct access to the clerk; and
- (c) may cause search to be made in and extracts to be taken from any record book, voucher or documents of the Council; and
- 5 (d) may call upon any member of the staff of the Council to give, and shall be entitled to receive without undue delay from that member, any explanations and information the internal auditor may reasonably require to enable him or her to perform his or her functions.

(4) If at any time it appears to the internal auditor that an offence has been committed in relation to—

- 10 (a) the collection, receipt, custody, control or payment of any funds of the Provincial or Metropolitan Council; or
- (b) the receipt, custody, control, issue, sale, transfer or delivery of any Provincial or Metropolitan Council property or State property assigned to the Provincial or Metropolitan Council;
- 15 he or she shall immediately bring the matter to the notice of the Provincial or Metropolitan Council, the clerk and Auditor General.

(5) Whenever the internal auditor has completed any internal audit programme, he or she shall prepare a report on the financial administration and accounting system of the Provincial or Metropolitan Council, and may include in such report any instances
20 of hindrance or obstruction he has encountered in the discharge of his duties, and shall transmit copies of such reports to the Provincial or Metropolitan Council, the clerk and any one of the persons approved by the Minister to be the Provincial or Metropolitan Council's external auditors.

91 Council's duties and production of accounts to auditor

- 25 For the purpose of an audit, the Council shall—
- (a) cause to be produced to the auditor all relevant books, papers, writings and minute books in its possession; and
 - (b) not later than one hundred and twenty days after the end of each financial year or such later date as the Minister may approve, cause the accounts
30 of the Council to be balanced to the end of such financial year and to lay before the auditor the balance sheets and accounts.

92 Council's duty re accounts and auditor's report

(1) Upon receipt of the audit report from the clerk the Council shall take note of the report and forthwith refer the report to the audit committee.

(2) Upon receipt of the audit report in terms of subsection (1) the audit
35 committee shall require the clerk to respond to the audit report forthwith.

(3) The audit committee shall, within fourteen days of receiving the clerk's response or at its next meeting, whichever is the later, consider the documents and as soon as it has completed its consideration of such documents, whether at that meeting or at an adjournment thereof, it shall submit the documents together with its own report
40 thereon to the Council.

(4) At a meeting held within one month after the audit committee has, in terms of subsection (3), submitted its recommendations, the Council shall itself consider such documents and the report of the finance committee thereon and at that meeting or at an adjournment thereof the Council shall—

- (a) if it finds the balance sheets and accounts reflect a true and fair view of the financial position of the Council and its transactions and of the results of its trading, certify them accordingly under the hand of the person presiding at that meeting;
 - (b) if the auditor has reported on any irregularities, decide what action should be taken in regard to the matters reported upon by the auditor and inform the auditor accordingly. 5
- (5) When any meeting referred to in—
- (a) subsection (3) is adjourned by the audit committee;
 - (b) subsection (4) is adjourned by the Council; 10
- that meeting shall be resumed as soon as is possible in the circumstances.
- (6) The Council shall not go into committee when considering the documents and report of the audit committee at the meeting referred to in subsection (2).
- (7) A copy of the final accounts, together with the auditor's report, shall be kept by the town clerk at the office of the Council and shall be open to inspection by any person during office hours, and any person may take extracts from any of those documents and may obtain copies thereof at such charge as may be fixed by the Council, which shall not exceed such amount, if any, as may be prescribed. 15
- (8) The Council shall, within fourteen days after the final accounts have been certified in terms of paragraph (a) of subsection (4), submit them, together with the auditor's report, to the Minister and shall also submit a statement of any decision the Council has taken in terms of paragraph (b) of subsection (4) as to any action to be taken as a result of the auditor's report. 20
- 93 Preparation and reporting of monthly financial statements**
- Every Provincial and Metropolitan Council shall prepare monthly financial statements and reports and shall submit such reports to the Minister, within fourteen days of the end of the respective month. 25
- 94 Preparation and reporting of quarterly financial statements**
- Every Provincial and Metropolitan Council shall prepare quarterly financial reports and shall submit such reports to the Minister, within fourteen days of the end of the respective quarter. 30
- 95 Power of Minister to conduct financial inquiry**
- (1) Without derogation from his or her powers, the Minister may, on good cause shown, appoint an appropriately qualified person to examine the accounts and records of a Council and shall give to the Council and the auditor no less than seven days' notice of such examination. 35
- (2) Every Council shall cause to be produced to any person conducting an examination referred to in subsection (1) all books, minute books and documents in its possession.
- (3) A person appointed in terms of subsection (1) shall— 40
- (a) for the purpose of his or her examination, have all the powers conferred on an auditor by this Part and subsections (3) and (9) to (11) of section 69 apply, *mutatis mutandis*, in relation to such person as if references in those subsections to an investigator and an investigation were references to a person appointed in terms of subsection (1) and an examination referred to in that subsection, respectively; and 45

- (b) report to the Minister in writing on his or her examination and send a copy of such report to the Council and the auditor.

(4) Upon receipt of the report, the Minister shall proceed in terms of section 69(13).

- 5 (5) The costs of an examination referred to in subsection (1) is borne by the Council concerned.

96 Amendment of section 38 of the principal Act

Section 38 ("Exemption of members, assigned employees and other persons from liability") of the principal Act is amended by—

- 10 (a) in paragraph (a) by the insertion after "Provincial Council" of "Metropolitan Council"; and
- (b) in paragraph (b) by the insertion after "Provincial Council" of "Metropolitan Council".

97 Amendment of section 40 of the Principal Act

- 15 Section 40 ("Minister to be furnished with reports and information") of the principal Act is by the repeal and substitution of the following—

- (a) in paragraph (a) by the insertion after "Provincial Council" of "Metropolitan Council"; and
- 20 (b) in paragraph (b) by the insertion after "Provincial Council" of "Metropolitan Council".

PART X

GENERAL

98 Reports by Councils

- (1) The chairperson of the Council—
- 25 (a) shall submit to the Minister an annual report on the performance of its functions and its financial affairs;
- (b) shall submit a report as when the Minister requires on any matter related to the performance of its functions as the Minister may require;
- 30 (c) may submit to the Minister, such other reports on any matter related to its activities as the Council considers advisable.

(2) The Minister shall table the annual report received in terms of this section before Parliament on one of the twenty-four days on which the Senate and the National Assembly next sit, whichever House meets first after the Speaker of the National Assembly has received the report.

- 35 (3) Upon receipt of the report by the Speaker, Parliament shall consider and act on the report not later than three months.

99 Inquiries by Minister and appointment of investigators

- (1) The Minister may, if he or she considers it necessary or desirable in the public interest, appoint one or more persons to inquire into any matter to the Council
- 40 affairs relating to the proper running of the Council affairs.

(2) A Council which is being investigated in terms of subsection (1) and every member and employee of such a Council shall, when so requested, submit to an investigator all information in its, his or her possession and produce to the investigator

and give him or her access to all books, documents, records, and other sources of information of the Council.

(3) For the purposes of an inquiry in terms of this section, it is lawful for the investigator—

- (a) to hear and receive evidence upon oath, which oath he or she is hereby empowered to administer; and 5
- (b) by summons under his or her hand, to require such persons as he or she may think fit to appear personally before the inquiry at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for the inquiry. 10

(4) If evidence is to be taken from members of the public, notice of the time and place at which evidence will be heard shall be given at the office of the Council concerned and in two issues of a newspaper circulating in the area:

Provided that the investigator shall comply with any law relating to the protection of the witnesses. 15

(5) A statement given by any person to an investigator under this section is not admissible in evidence in any court of law, except with the consent of all persons affected by it or for the purposes of a prosecution under subsection (9), (10) or (11).

(6) The Minister shall ensure that any facility required for the inquiry is made available by the Council within such time as the Minister may require failing which the Minister may, on behalf of the Council, provide such facility. 20

(7) The costs of an inquiry in terms of this section shall be borne by the Minister and may be recovered after a court determination to that effect.

(8) An investigator and his or her assistants and advisers are paid such fees as the Minister may fix and those fees shall be included in the costs of the inquiry referred to in subsection (7). 25

(9) Any member, officer or employee of a Council who—

- (a) refuses or fails to answer to the best of his or her ability any lawful question put to him or her by, or wilfully makes any false statement to, an investigator in the exercise of his or her functions in terms of this section; or 30
- (b) refuses or fails to comply to the best of his or her ability with any lawful requirement made by an investigator in the exercise of his or her functions in terms of this section; Shall be guilty of an offence and liable to a fine not exceeding level 5 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 35

(10) Any person who—

- (a) threatens, resists, hinders or obstructs or uses abusive, insulting or obscene language towards, or at, an investigator or any person referred to in subsection (1) while that investigator or other person is exercising his or her functions in terms of this section; or 40
- (b) falsely holds himself or herself out to be an investigator or other person appointed in terms of subsection (1); or
- (c) without lawful excuse, having been summoned in terms of subsection (3)—
 - (i) refuses or fails to attend in obedience to such summons; or 45
 - (ii) having so attended, refuses to be examined upon oath or to take the oath; or

(iii) refuses or fails to produce any books or papers he or she has been required to produce; Shall be guilty of an offence and liable to a fine not exceeding level 5 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

5 (11) Any person, who, having taken an oath under subsection (3), makes any false statement knowing it to be false or not reasonably believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level 7 or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(12) A conviction for an offence in terms of this section shall not exempt the
10 person convicted from liability to do or perform the act, matter or thing required to be done or performed by him or her.

(13) The Minister may, on receipt of a report arising from an inquiry instituted in terms of this section, act on the findings and recommendations in the report which advance public interest.

15 **100 Copy of Act and regulations to be available for inspection**

Every Council shall ensure that a copy of—

- (a) this Act; and
- (b) ordinances;
- (c) regulations;
- 20 (d) standing orders; are available for inspection by any person at the office of the Council during office hours.

101 Organised local government and intergovernmental co-operation

The Minister, may make regulations providing for—

- 25 (a) the establishment and structure of national and Council organisations representing Councils;
- (b) the establishment of appropriate structures and institutions to promote and facilitate intergovernmental consultations, co-operation and co-ordinated implementation of national policies and governmental programmes; and
- 30 (c) the procedures and mechanisms by which Councils shall consult and co-operate with the national government and local authorities;
- (d) the duties of Councils with respect to the establishment of the organisations.

102 Regulations

(1) Subject to this Act or any other Act, the Minister and any other line Minister may, in consultation with Council(s), make regulations prescribing anything which in
35 terms of this Act is required or permitted to be prescribed or which, in his or her opinion is necessary to be prescribed for carrying out or giving effect to the objects of this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the devolution of governmental powers and responsibilities to Councils by respective Ministers;
- 40 (b) form of accounts, statements and reports to be prepared in terms of this Act;
- (c) the form of budget, including supplementary estimates, to be prepared and the manner in which information shall be set out in such estimates;
- (d) the collection of revenue;

- (e) the control of stores and stocktaking;
- (f) the conduct of audits;
- (g) the custody and preservation of moneys, securities and other property of Councils or committees or for which Councils or committees are responsible; 5
- (h) the reporting of losses of cash and assets;
- (i) the time and manner of applying for borrowing powers;
- (j) standards to be achieved and upheld by the Councils in the exercise of their functions.

(3) Regulations in terms of subsection (1) may create offences and specify penalties therefor, but no such penalty shall exceed a fine of level 7 or imprisonment for a period not exceeding two years or both such fine or such imprisonment. 10

103 Making of ordinances

(1) Subject to this Act a Council may make ordinances in relation to any matter specified in the First Schedule or incidental thereto. 15

(2) Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], the power of a Council to make ordinances may be exercised in respect of the whole province.

104 Model ordinances

(1) The line Minister may publish in a statutory instrument, model ordinances for any matter for which a Council may make ordinances. 20

(2) A Council may, in accordance with sections 73 and 75, make ordinances adopting by reference wholly or in part and with or without modification any model ordinances, which have been made in terms of subsection (1) and which relate to any matter in respect of which the Council may make ordinances. 25

105 Effect of repeal or amendment of model ordinances

Where the whole or part of any model ordinances made in terms of section 74 have been adopted by a Council, such model ordinances or part thereof shall remain of full force and effect within the province, notwithstanding the repeal or substitution in toto of such model ordinances or part thereof by the Minister. 30

106 Obstruction and impersonation

Any person who—

- (a) at a meeting of a Council, creates a disturbance or uses insulting, abusive or obscene language; or
- (b) threatens, resists, hinders or obstructs a Council or any member, officer or employee of the Council or contractor employed by a Council in the performance of anything which it, he or she, as the case may be, is empowered or required by or in terms of this Act to do; or 35
- (c) uses abusive, insulting or obscene language towards any person referred to in paragraph (b); or 40
- (d) falsely holds himself or herself out to be a member, an officer, employee or contractor of a Council; 39 shall be guilty of an offence and liable to a fine not exceeding level 5 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

107 Exemption of members and staff from personal liability no matter or thing—

- (a) done or omitted or contract entered into by the Council or any committee thereof; or
- 5 (b) done or omitted by a member of Council or other member of a committee or by an officer or employee of a Council or other person acting under the specific or general directions of the Council or of a committee thereof; which was done or omitted or, in the case of a contract, entered into in good faith and without recklessness for the purposes of this Act subjects
- 10 the member of Council or other member of a committee, officer or employee of a Council, or other person to any action, liability, claim or demand whatsoever and any expenses incurred by the Council, a member of Council or other member of a committee, officer, employee or other person as a result of such action, claim or demand shall be borne by the
- 15 Council.

FIRST SCHEDULE (Section 73)

MATTERS THAT MAY BE PRESCRIBED THROUGH ORDINANCES

PART A

Functional Areas of Concurrent National and Provincial Legislative Competence:

1. Administration of indigenous forests
2. Agriculture
3. Airports other than international and national airports
4. Animal control and diseases
5. Casinos, racing, gambling and wagering, excluding lotteries and sports pools
6. Consumer protection
7. Cultural matters subject to Chapters 2 and 4 of the Constitution
8. Disaster management
9. Education at all levels, excluding tertiary education
10. Environment
11. Health services
12. Housing
13. Industrial promotion
14. Media services directly controlled or provided by the provincial government, subject to any law enacted in terms of section 249(3) of the Constitution
15. Nature conservation, excluding national parks, national botanical gardens and marine resources
16. Pollution control
17. Population development
18. Provincial public enterprises in respect of matters set out in this Schedule.
19. Public transport
20. Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
21. Regional planning and development

22. Road traffic regulation
23. Soil conservation
24. Tourism
25. Trade
26. Traditional leadership, subject to Chapter 12 of the Constitution
27. Urban and rural development
28. Vehicle licensing
29. Welfare services

PART B

FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

1. Abattoirs
2. Ambulance services
3. Archives other than national archives
4. Amusement facilities
5. Billboards and the display of advertisements in public places
6. Building regulations
7. Cemeteries, funeral parlours and crematoria
8. Child care facilities
9. Cleansing
10. Control of public nuisances
11. Control of undertakings that sell liquor to the public
12. Electricity supply
13. Facilities for the accommodation, care and burial of animals
14. Fencing and fences
15. Firefighting services
16. Libraries other than national libraries
17. Licensing of dogs
18. Licensing and control of undertakings that sell food to the public
19. Liquor licences
20. Local amenities
21. Local sport facilities
22. Local tourism
23. Local markets
24. Museums other than national museums
25. Physical planning
26. Pounds
27. Provincial planning
28. Provincial cultural matters
29. Provincial recreation and amenities

30. Provincial sport
31. Provincial roads and traffic
32. Public places
33. Public transport
34. Public works only in respect of the needs of province in the discharge of their responsibilities
35. Refuse removal, refuse dumps and solid waste disposal
36. Storm water management systems in built-up areas
37. Street trading
38. Street lighting
39. Trading regulations
40. Traffic and parking
41. Veterinary services, excluding regulation of the profession
42. Water and sanitation services, potable water supply systems and waste-water and sewage disposal systems

