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GOVERNMENT NOTICES

NATIONAL TREASURY

No. R. 308

1 April 2005

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 2003 MUNICIPAL INVESTMENT REGULATIONS

The Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government, has in terms of section 168, read with section 13 and 99 (2) (g), of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), made the regulations as set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –
 - “Act” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
 - “investee” means an institution with which an investment is placed, or its agent;
 - “investment manager” means a natural person or legal entity that is a portfolio manager registered in terms of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), and Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), contracted by a municipality or municipal entity to –
 - (a) advise it on investments;
 - (b) manage investments on its behalf; or
 - (c) advise it on investments and manage investments on its behalf;
 - “trust money” means money held in trust on behalf of third parties in a trust contemplated in terms of section 12 of the Act.

Application

2. (1) These regulations apply to –
 - (a) all municipalities;
 - (b) all municipal entities; and
 - (c) all investment managers acting on behalf of, or assisting, a municipality or municipal entity in making or managing investments.
- (2) These regulations do not apply –
 - (a) to a pension or provident fund registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any subsequent legislation; or

- (b) in respect of trust money administered by a municipality or municipal entity where a trust deed prescribes how the trust money is to be invested.

(3) Municipal pension or provident funds which do not comply with subregulation (2) (a) are exempted from these regulations until 30 June 2005.

(4) The accounting officer of a municipality and municipal entity must provide the National Treasury with details of all pension or provident funds that do not comply with subregulation (2) (a) within 30 days of promulgation of these regulations.

Adoption of investment policies

3. (1) The investment policy to be established by a municipality in terms of section 13 (2) of the Act, must be –

- (a) adopted by the council of the municipality; and
- (b) consistent with the Act and these regulations.

(2) The board of directors of a municipal entity must adopt an investment policy for the entity consistent with the Act and these regulations.

(3) All investments made by a municipality or municipal entity, or by an investment manager on behalf of a municipality or municipal entity, must be in accordance with the investment policy of the municipality or entity and these regulations.

Core elements of Investment policies

4. The investment policy of a municipality or municipal entity must –

- (a) be in writing;
- (b) give effect to these regulations; and
- (c) set out –
 - (i) the scope of the policy;
 - (ii) the objectives of the policy, with due regard to the provisions of these regulations relating to –
 - (aa) the preservation and safety of investments as the primary aim;

- (bb) the need for investment diversification; and
- (cc) the liquidity needs of the municipality or municipal entity;
- (iii) a minimum acceptable credit rating for investments, including –
 - (aa) a list of approved investment types that may be made, subject to regulation 6;
 - (bb) a list of approved institutions where or through which investments may be made, subject to regulation 10;
- (iv) procedures for the invitation and selection of competitive bids or offers in accordance with Part 1 of Chapter 11 of the Act;
- (v) measures for ensuring implementation of the policy and internal control over investments made;
- (vi) procedures for reporting on and monitoring of all investments made, subject to regulation 9;
- (vii) procedures for benchmarking and performance evaluation;
- (viii) the assignment of roles and functions, including any delegation of decision-making powers;
- (ix) if investment managers are to be used, conditions for their use, including their liability in the event of non-compliance with the policy or these regulations; and
- (x) procedures for the annual review of the policy.

Standard of care to be exercised when making investments

5. Investments by a municipality or municipal entity, or by an investment manager on behalf of a municipality or entity –
- (a) must be made with such judgment and care, under the prevailing circumstances, as a person of prudence, discretion and intelligence would exercise in the management of that person's own affairs;
 - (b) may not be made for speculation but must be a genuine investment; and
 - (c) must in the first instance be made with primary regard being to the probable safety of the investment, in the second instance to the liquidity needs of the municipality or municipal entity and lastly to the probable income derived from the investment.

Permitted Investments

6. A municipality or municipal entity may invest funds only in any of the following investment types -
- (a) securities issued by the national government;
 - (b) listed corporate bonds with an investment grade rating from a nationally or internationally recognised credit rating agency;
 - (c) deposits with banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990);
 - (d) deposits with the Public Investment Commissioners as contemplated by the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);
 - (e) deposits with the Corporation for Public Deposits as contemplated by the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);
 - (f) banker's acceptance certificates or negotiable certificates of deposit of banks registered in terms of the Banks Act, 1990;
 - (g) guaranteed endowment policies with the intention of establishing a sinking fund;
 - (h) repurchase agreements with banks registered in terms of the Banks Act, 1990;
 - (i) municipal bonds issued by a municipality; and
 - (j) any other investment type as the Minister may identify by regulation in terms of section 168 of the Act, in consultation with the Financial Services Board.

Investments denominated in foreign currencies prohibited

7. A municipality or municipal entity may make an investment only if the investment is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency.

Payment of commission

8. (1) No fee, commission or other reward may be paid to a councillor or official of a municipality or to a director or official of a municipal entity or to a spouse or close family member of such councillor, director or official in respect of any investment made or referred by a municipality or municipal entity.

- (2) If an investee pays any fee, commission or other reward to an investment manager in respect of any investment made by a municipality or municipal entity, both the investee and the investment manager must declare such payment to the council of the municipality or the board of directors of the municipal entity by way of a certificate disclosing full details of the payment.

Reporting requirements

9. (1) The accounting officer of a municipality or municipal entity must within 10 working days of the end of each month, as part of the section 71 report required by the Act, submit to the mayor of the municipality or the board of directors of the municipal entity a report describing in accordance with generally recognised accounting practice the investment portfolio of that municipality or municipal entity as at the end of the month.
- (2) The report referred to in subregulation (1) must set out at least –
- (a) the market value of each investment as at the beginning of the reporting period;
 - (b) any changes to the investment portfolio during the reporting period;
 - (c) the market value of each investment as at the end of the reporting period; and
 - (d) fully accrued interest and yield for the reporting period.

Credit requirements

10. (1) A municipality or municipal entity must take all reasonable and prudent steps consistent with its investment policy and according to the standard of care set out in regulation 5, to ensure that it places its investments with credit-worthy institutions.
- (2) A municipality or municipal entity must –
- (a) regularly monitor its investment portfolio; and
 - (b) when appropriate liquidate an investment that no longer has the minimum acceptable credit rating as specified in its investment policy.

Portfolio diversification

11. A municipality or municipal entity must take all reasonable and prudent steps, consistent with its investment policy and according to the standard

of **care** prescribed in regulation 5, to diversify its investment portfolio **across** institutions, types of investment and investment maturities.

Miscellaneous provisions

12. (1) The responsibility and risk arising from any investment transaction vests in the relevant municipality or municipal entity.
- (2) All investments made by a municipality or municipal entity must be in the name of that municipality or municipal entity.
- (3) A municipality or municipal entity may not borrow money for the purpose of investment.

Existing Investments

13. Nothing in these regulations compels a municipality or municipal entity to liquidate an investment which **existed** when these regulations took effect merely because such investment does not comply with a provision of these regulations.

Commencement

14. These regulations take effect on 1 April 2005.