

DIVISION OF REVENUE ACT 1 OF 2010

(English text signed by the President)

[Assented to: 31 March 2010]

[Commencement date: 1 April 2010]

ACT

To provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government for the 2010/11 financial year and the responsibilities of all three spheres pursuant to such division; and to provide for matters connected therewith.

PREAMBLE

WHEREAS [section 214](#)(1) of the Constitution of the Republic of South Africa, 1996, requires an Act of Parliament to provide for -

- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
- (b) the determination of each province's equitable share of the provincial share of that revenue; and
- (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

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CHAPTER 1 INTERPRETATION AND OBJECTS OF ACT

1. Interpretation

- (1) In this Act, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Public Finance Management Act or the Municipal Finance Management Act has the meaning assigned to it in the Act in question, and -

“accredited municipality” means a municipality accredited in terms of [section 10\(2\)](#) of the Housing Act, 1997 (Act No. 107 of 1997), to administer national housing programmes;

“category A, B or C municipality” has the meaning assigned to each category in terms of the Municipal Structures Act;

“conditional allocation” means a conditional allocation to a province, local government or municipality from the national government’s share of revenue raised nationally, contemplated in [section 214\(l\)\(c\)](#) of the Constitution of the Republic of South Africa, 1996;

“corporation for public deposits account” means a bank account of the Provincial Revenue Fund held with the Corporation for Public Deposits, established by the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);

“financial year” means the financial year commencing on 1 April 2010 and ending on 31 March 2011;

“framework” means the conditions and other information in respect of a conditional allocation published by the National Treasury in terms of [section 14](#);

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

“municipal financial year” means the financial year of a municipality commencing on 1 July 2010 and ending on 30 June 2011;

“next financial year” means the financial year commencing on 1 April 2011 and ending on 31 March 2012;

“next municipal financial year” means the financial year of a municipality commencing on 1 July 2011 and ending on 30 June 2012;

“organ of state” means an organ of state as defined in [section 239](#) of the Constitution;

“payment schedule” means a schedule which sets out -

- (a) the amount of each transfer of an equitable share or any conditional allocation in terms of this Act to be transferred to a province or municipality in the financial year;
- (b) the date on which each transfer must be paid; and
- (c) to whom, and to which bank account, each transfer must be paid;

“prescribe” means prescribe by regulation in terms of [section 37](#);

“primary bank account”-

- (a) in relation to a province, means a bank account of the Provincial Revenue Fund held with a commercial bank which the head of the department in the provincial treasury has certified to the National Treasury as the bank account into which all conditional allocations, other than the Gautrain Rapid Rail Link Grant, in terms of this Act must be deposited; and
- (b) in relation to a municipality, means the bank account of the municipality as determined in terms of [section 8](#) of the Municipal Finance Management Act;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“quarter” means the period from-

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; or
- (d) 1 January to 31 March;

“receiving officer”-

- (a) in relation to a [Schedule 4](#), [5](#) or [8](#) allocation transferred to a province, means the accounting officer of the provincial department which receives that allocation or a portion thereof for spending via an appropriation from its Provincial Revenue Fund; or

- (b) in relation to a [Schedule 4, 6, 7 or 8](#) allocation transferred to or provided in kind to a municipality, means the accounting officer of the municipality;

“this Act” includes any framework or allocation published, or any regulation, determination or request made or instruction given under this Act;

“transferring national officer” means the accounting officer of a national department that transfers a [Schedule 4, 5, 6 or 8](#) allocation to a province or municipality or spends a [Schedule 7](#) allocation on behalf of a municipality.

- (2) Any determination, instruction or request in terms of this Act must be in writing.

2. Objects of Act

The objects of this Act are to -

- (a) provide for the equitable division of revenue raised nationally among the three spheres of government;
- (b) promote better co-ordination between policy, planning, budget preparation and execution processes between and within the different spheres of government;
- (c) promote predictability and certainty in respect of all allocations to provinces and municipalities, in order that such governments may plan their budgets over a multi-year period;
- (d) promote transparency and equity in the resource allocation process; and
- (e) promote accountability by ensuring that all allocations are reflected on the budgets of receiving provinces and municipalities, and by ensuring that the expenditure of conditional allocations is reported on by the receiving provinces and municipalities.

CHAPTER 2 EQUITABLE SHARE ALLOCATIONS

3. Equitable division of revenue raised nationally among spheres of government

- (1) Revenue raised nationally in respect of the financial year must be divided among the national, provincial and local spheres of government for their equitable share allocations as set out in Column A of [Schedule 1](#).
- (2) An envisaged division of revenue anticipated to be raised in respect of the next financial year and the 2012/13 financial year, and which is subject to the provisions of the annual Division of Revenue Acts in respect of those financial years, is set out in Column B of [Schedule 1](#).

4. Equitable division of provincial share among provinces

- (1) Each province's equitable share of the provincial share of revenue raised nationally in respect of the financial year is set out in Column A of [Schedule 2](#).
- (2) An envisaged division for each province of revenue anticipated to be raised nationally in respect of the next financial year and the 2012/13 financial year, and which is subject to the provisions of the annual Division of Revenue Acts in respect of those financial years, is set out in Column B of [Schedule 2](#).
- (3) Each province's equitable share allocation contemplated in subsection (1) must be transferred to the corporation for public deposits account of the province, in accordance with a payment schedule determined by the National Treasury in terms of [section 21](#).

5. Equitable division of local government share among municipalities

- (1) Each municipality's share of local government's equitable share of revenue raised nationally in respect of the financial year, is set out in Column A of [Schedule 3](#).
- (2) An envisaged division between municipalities of revenue anticipated to be raised nationally in respect of the next financial year and the 2012/13 financial year, and which is subject to the provisions of the annual Division of Revenue Acts in respect of those financial years, is set out in Column B of [Schedule 3](#).
- (3) Each municipality's equitable share contemplated in subsection (1) must be transferred to the primary bank account of the municipality in three transfers on 7 July 2010, 30 November 2010 and 25 March 2011, in accordance with a payment schedule determined by the National Treasury in terms of [section 21](#).

6. Shortfalls, excess revenue and additional allocations

- (1) If actual revenue raised nationally in respect of the financial year falls short of the anticipated revenue set out in [Schedule 1](#), the national government bears the shortfall.
- (2) If actual revenue raised nationally in respect of the financial year exceeds the anticipated revenue set out in [Schedule 1](#), the excess accrues to the national government, subject to subsection (3), to be used to reduce borrowing or pay debt as part of its share of revenue raised nationally, in addition to its share in Column A of [Schedule 1](#).
- (3) The national government may-
 - (a) appropriate a portion of its equitable share or excess revenue contemplated in subsection (2) to make further allocations in an adjustments budget to -

- (i) national departments; or
 - (ii) provinces or municipalities, as a conditional or an unconditional allocation;
- (b) increase a conditional allocation to a province or municipality through a virement under [section 43](#) of the Public Finance Management Act or [section 28\(2\)\(d\)](#) of the Municipal Finance Management Act, as the case may be; and
- (c) authorise expenditure in accordance with [section 25](#).

CHAPTER 3

CONDITIONAL ALLOCATIONS TO PROVINCES AND MUNICIPALITIES

Part 1

Conditional allocations

7. Conditional allocations to provinces

- (1) Conditional allocations to provinces in respect of the financial year from the national government's share of revenue raised nationally are set out in Column A of the following Schedules:
 - (a) [Schedule 4](#), specifying allocations to provinces to supplement the funding of programmes or functions funded from provincial budgets;
 - (b) [Schedule 5](#), specifying specific-purpose allocations to provinces; and
 - (c) [Schedule 8](#), specifying incentives to provinces to meet targets with regards to priority government programmes.
- (2) An envisaged division of conditional allocations to provinces from the national government's share of revenue anticipated to be raised nationally for the next financial year and the 2012/13 financial year, which is subject to the annual Division of Revenue Acts in respect of those financial years, is set out in Column B of the Schedules referred to in subsection (1).

8. Conditional allocations to municipalities

- (1) Conditional allocations to local government in respect of the financial year from the national government's share of revenue raised nationally are set out in Column A of the following Schedules:
 - (a) [Schedule 4](#), specifying allocations to municipalities to supplement the funding of functions funded from municipal budgets;

- (b) [Schedule 6](#), specifying specific-purpose allocations to municipalities;
 - (c) [Schedule 7](#), specifying allocations-in-kind to municipalities for designated special programmes; and
 - (d) [Schedule 8](#), specifying incentives to municipalities to meet targets with regards to priority government programmes.
- (2) An envisaged division of conditional allocations to local government from the national government's share of revenue anticipated to be raised nationally for the next financial year and the 2012/13 financial year, which, with the exception of what is provided in subsection (4) in relation to the Public Transport Infrastructure and Systems Grant, is subject to the annual Division of Revenue Acts for those years, is set out in Column B of the Schedules referred to in subsection (1).
 - (3) The National Treasury must publish the share or indicative allocation of each municipality in respect of the local government allocations contemplated in subsections (1) and (2) in the *Gazette* in terms of [section 14](#).
 - (4) Notwithstanding anything to the contrary contained in subsection (2), in respect of the Public Transport Infrastructure and Systems Grant, funding which is specifically approved by the National Treasury in relation to transport contracts for capital projects must be regarded as being firm allocations for the next financial year and the 2012/13 financial year that will not be altered downwards in the Division of Revenue Acts in respect of those financial years.
 - (5) A municipality may only after obtaining the approval of the National Treasury, pledge, offer as security or commit to a person or institution future conditional allocation transfers due to the municipality for the next financial year and the 2012/13 financial year, for the purpose of securing a loan or any other form of financial or other support from that person or institution.

Part 2

Duties of accounting officers in respect of Schedule 4, 5, 6, 7 or 8 allocations

9. Duties of transferring national officer in respect of Schedule 4 allocation

- (1) The transferring national officer of a [Schedule 4](#) allocation is responsible for-
 - (a) ensuring that transfers to all provinces and municipalities are -
 - (i) deposited only into the primary bank account of a province or municipality; and

- (ii) made in accordance with the payment schedule approved in terms of [section 21](#), unless allocations are withheld or stopped in terms of [section 16](#) or [17](#);
 - (b) monitoring expenditure and non-financial performance information on programmes funded by an allocation, provided that any monitoring programme or system-
 - (i) is approved by the National Treasury;
 - (ii) does not impose any undue administrative burden on receiving provinces and municipalities beyond the provision of standard management information;
 - (iii) is compatible and integrated with and does not duplicate other relevant and related national, provincial and local systems; and
 - (iv) is consistent with [section 11](#)(2);
 - (c) complying with the requirements of the applicable framework; and
 - (d) evaluating the performance of programmes funded or partially funded by the allocation and the submission of such evaluations to the National Treasury, within four months in respect of a province, and six months in respect of a municipality, after the end of the financial year.
- (2)
- (a) Subsection (1)(b) does not apply to the Municipal Infrastructure Grant (Cities).
 - (b) Municipalities that receive the Municipal Infrastructure Grant (Cities) are only required to report expenditure and non-financial performance information against their capital budgets, in accordance with the requirements of [section 71](#) of the Municipal Finance Management Act.

10. Duties of transferring national officer in respect of Schedule 5, 6, 7 or 8 allocation

- (1) A transferring national officer must -
 - (a) not later than 14 days after this Act takes effect, certify to the National Treasury that-
 - (i) allocation frameworks, including conditions and monitoring provisions, are reasonable and do not impose an undue administrative burden on receiving provincial departments and municipalities beyond the provision of standard management information;

- (ii) monitoring provisions are compatible and integrated with and do not duplicate other relevant and related national, provincial and local systems;
 - (iii) in respect of a [Schedule 5](#) allocation, any business plans requested in respect of how allocations will be utilised by a province, have been approved prior to the start of the financial year;
 - (iv) in respect of a [Schedule 6](#) allocation transferred to a municipality, any business plans requested in respect of how allocations will be utilised by a municipality, have been approved prior to the start of the financial year;
 - (b) transfer funds only after information required in terms of this Act has been secured and all relevant information has been provided to the National Treasury;
 - (c) transfer funds only in accordance with a payment schedule determined in accordance with [section 21](#);
 - (d) deposit funds only into the primary bank account of a province or municipality, or, where appropriate, into the corporation for public deposits account of a province or the bank account designated for the transfer of the Gautrain Rapid Rail Link Grant; and
 - (e) ensure that all other arrangements or requirements as stipulated in the Act or in the relevant framework for the particular allocation necessary for the transfer of an allocation have been complied with prior to the start of the financial year, and are complied with throughout the financial year.
- (2) The transferring national officer must submit all relevant information and documentation referred to in subsection (1)(a) to the National Treasury within 14 days after this Act takes effect.
 - (3) A transferring national officer who has not complied with subsection (1) must transfer the allocation in the manner instructed by the National Treasury, including transferring the allocation as an unconditional allocation.
 - (4) Before making the first transfer of any allocation, the transferring national officer must take note of any notice in terms of [section 30](#)(1) from the National Treasury outlining the details of the account for each province or municipality.
 - (5) Despite anything to the contrary contained in any law, a transferring national officer must in respect of any allocation, as part of the report contemplated in [section 40](#)(4)(c) of the Public Finance Management Act, not later than 20 days after the end of each month, and in the format determined by the National Treasury, submit to the

National Treasury information for the month reported on and for the financial year up to the end of that month on-

- (a) the amount of funds transferred to a province or municipality;
 - (b) the amount of funds withheld or stopped from any province or municipality, the reasons for the withholding or stopping and the steps taken by the transferring national officer and the receiving officer to deal with the matters or causes that necessitated the withholding or stopping of the payment;
 - (c) the actual expenditure incurred by the province or municipality in respect of a [Schedule 5](#) or [6](#) allocation;
 - (d) the actual expenditure incurred by the transferring national officer in respect of a [Schedule 7](#) allocation;
 - (e) any matter or information that may be prescribed in the relevant framework for the particular allocation; and
 - (f) such other issues as the National Treasury may determine.
- (6) A transferring national officer must submit a quarterly performance report within 45 days after the end of each quarter to the National Treasury, in accordance with the requirements of the relevant framework.
- (7) The transferring national officer must evaluate the performance of programmes funded or partially funded by the allocation and submit such evaluations to the National Treasury, within four months in respect of a province, and six months in respect of a municipality, after the end of the financial year.
- (8) The transferring national officer for the Human Settlements Development Grant, after consultation with the receiving officer and the National Treasury, must determine the allocations for each accredited municipality by 14 April 2010, and submit those allocations to the National Treasury by 30 April 2010, for publication in the *Gazette*.

11. Duties of receiving officer in respect of Schedule 4 allocation

- (1) A receiving officer of a [Schedule 4](#) allocation is responsible for-
- (a) complying with the framework for a [Schedule 4](#) allocation as published in terms of [section 14](#); and
 - (b) the manner in which it allocates and spends a [Schedule 4](#) allocation.
- (2) The receiving officer of a municipality must-

- (a) ensure and certify to the National Treasury that the municipality-
 - (i) indicates or, if required, exclusively appropriates each programme funded or partially funded by this allocation in its annual budget; and
 - (ii) makes public, in accordance with the requirements of [section 21A](#) of the Municipal Systems Act, the conditions and other information in respect of the allocation, to facilitate performance measurement and the use of required inputs and outputs;
- (b) as part of the report required in terms of [section 71](#) of the Municipal Finance Management Act, report to the transferring national officer, the relevant provincial treasury and the National Treasury on-
 - (i) spending and financial performance against programmes funded by a [Schedule 4](#) allocation, other than the Municipal Infrastructure Grant (Cities); and
 - (ii) in the case of the Municipal Infrastructure Grant (Cities), spending and financial performance against the municipality's entire capital budget, and performance against the targets stipulated in the infrastructure performance framework that is required in terms of the allocation framework; and
- (c) quarterly, within 30 days after the end of each quarter, report to the transferring national officer and the National Treasury on-
 - (i) non-financial performance against programmes, in respect of [Schedule 4](#) allocations other than the Municipal Infrastructure Grant (Cities); and
 - (ii) performance for that quarter against the targets stipulated in the infrastructure performance framework that is required in terms of the allocation framework, in respect of the Municipal Infrastructure Grant (Cities).
- (3) The National Treasury must make the report submitted to it in terms of [section 11\(2\)\(b\)](#) or (c) available to any other national departments that have responsibilities relating to the grant.
- (4) The receiving officer in a province must-
 - (a) submit, as part of the report required in [section 40\(4\)\(c\)](#) of the Public Finance Management Act, reports to the relevant provincial treasury on spending and performance against programmes; and

- (b) submit a quarterly performance report within 30 days after the end of each quarter to the relevant provincial treasury and the National Treasury.
- (5) The receiving officer must report against programmes funded or partially funded by a [Schedule 4](#) allocation against the relevant framework in the annual financial statements and annual report.
- (6) The receiving officer must, within two months after the end of the financial year, and where relevant, the municipal financial year, evaluate the performance of the province or municipality, as the case may be, in respect of programmes funded or partially funded by an allocation and submit such evaluation to the transferring national officer.

12. Duties of receiving officer in respect of Schedule 5, 6 or 8 allocation

- (1) The receiving officer of a [Schedule 5, 6 or 8](#) allocation must ensure compliance with the requirements of the relevant framework.
- (2) The relevant receiving officer must, in respect of a [Schedule 5, 6 or 8](#) allocation transferred to-
 - (a) a province, as part of the report required in [section 40\(4\)\(c\)](#) of the Public Finance Management Act, report on the matters referred to in subsection (3) and submit a copy of the [section 40\(4\)\(c\)](#) report to the relevant provincial treasury and the transferring national officer;
 - (b) a municipality, as part of the report required in terms of [section 71](#) of the Municipal Finance Management Act, report on the matters referred to in subsection (4) and submit a copy of the [section 71](#) report to the relevant provincial treasury, the National Treasury and the relevant transferring national officer; and
 - (c) a province or a municipality, submit a quarterly performance report within 30 days after the end of each quarter to the transferring national officer, the relevant provincial treasury and the National Treasury.
- (3) A report by a province in terms of subsection (2)(a) must set out for that month and for the financial year up to the end of that month -
 - (a) the amount received by the province;
 - (b) the amount of funds stopped or withheld from the province;
 - (c) the actual expenditure by the province in respect of a [Schedule 5](#) allocation;

- (d) the amount transferred to any national or provincial public entity to implement a programme funded by a [Schedule 5](#) allocation on behalf of a province or to assist the province in implementing such a programme;
 - (e) the most up to date available figures regarding the actual expenditure by a public entity referred to in paragraph (d);
 - (f) the extent of compliance with this Act and with the conditions of an allocation provided for in a framework;
 - (g) an explanation of any material problems experienced by the province regarding an allocation which has been received and a summary of the steps taken to deal with such problems;
 - (h) any matter or information that may be prescribed in the relevant framework for the particular allocation; and
 - (i) such other issues and information as the National Treasury may determine.
- (4) A report by a municipality in terms of subsection (2)(b) must set out for that month and for the financial year up to the end of that month-
- (a) the amount received by the municipality;
 - (b) the amount of funds stopped or withheld from the municipality;
 - (c) the extent of compliance with this Act and with the conditions of an allocation or part of an allocation provided for in a framework;
 - (d) an explanation of any material problems experienced by the municipality regarding an allocation which has been received and a summary of the steps taken to deal with such problems;
 - (e) any matter or information that may be prescribed in the relevant framework for the particular allocation; and
 - (f) such other issues and information as the National Treasury may determine.
- (5)
- (a) Subsections (2) and (3) do not apply to the receiving officer of the Gautrain Rapid Rail Link Grant.
 - (b) The receiving officer of the Gautrain Rapid Rail Link Grant must, at the end of each quarter, submit a report to the transferring national officer, detailing the payment made in that quarter to meet its payment obligation in terms of the

public-private partnership agreement entered into by the province in accordance with regulations issued under the Public Finance Management Act.

- (c) Copies of payment certificates issued in terms of the public-private partnership agreement must be submitted together with the report referred to in paragraph (b).
- (6) The receiving officer of the 2010 FIFA World Cup Stadiums Development Grant must, in addition to what is provided in subsection (2) -
 - (a) submit a final report on the stadium construction programme, including all expenditure and a reconciliation of those bank accounts that were used for the stadium construction programme; and
 - (b) attach to the report contemplated in that subsection copies of payment certificates issued in terms of the construction contract entered into by the municipality which comply with the requirements of the Municipal Finance Management Act.
- (7) A receiving officer must, within two months after the end of the financial year, and where relevant, the municipal financial year, evaluate its performance in respect of programmes or functions funded or partially funded by an allocation and submit such evaluation to the transferring national officer.

13. Duties in respect of annual financial statements and annual reports for 2010/11

- (1) The 2010/11 financial statements of a national department transferring any funds in respect of an allocation set out in [Schedule 4, 5, 6 or 8](#) must, in addition to any requirements in terms of any other applicable law -
 - (a) indicate the total amount of that allocation transferred to a province or municipality;
 - (b) indicate the transfers, if any, that were withheld in respect of each province or municipality;
 - (c) indicate any re-allocations by the National Treasury in terms of [section 18](#) or by the transferring national officer in respect of the Expanded Public Works Programme Incentive Grant;
 - (d) certify that all transfers to a province or municipality were deposited into the primary bank account of a province or municipality or, where appropriate, into the corporation for public deposits account of a province; and
 - (e) indicate the funds, if any, utilised for the administration of the allocation by the receiving officer.

- (2) The 2010/11 annual report of a national department transferring any funds in respect of an allocation set out in [Schedule 4](#), [5](#), [6](#) or [8](#) must, in addition to any requirements in terms of any other applicable law -
- (a) indicate the reasons for the withholding of any transfers to a province or municipality;
 - (b) indicate to what extent provinces or municipalities were monitored for compliance with this Act and the conditions of an allocation provided for in the relevant framework;
 - (c) indicate to what extent the allocation achieved its purpose and outputs; and
 - (d) indicate any non-compliance with this Act or the relevant framework, and the steps taken to deal with such non-compliance.
- (3) The 2010/11 financial statements of a provincial department receiving an allocation in terms of [Schedule 4](#), [5](#) or [8](#) must, in addition to any requirements in terms of any other applicable law -
- (a) indicate the total amount of all allocations received;
 - (b) indicate the total amount of actual expenditure on all allocations except [Schedule 4](#) allocations; and
 - (c) certify that all transfers in terms of this Act to the province were deposited into the primary bank account of the province or, where appropriate, into the corporation for public deposits account of a province.
- (4) The 2010/11 annual report of a provincial department receiving an allocation in terms of [Schedule 4](#), [5](#) or [8](#) must, in addition to any requirements in terms of any other applicable law -
- (a) indicate to what extent the provincial department complied with the provisions of this Act and met the conditions provided for in the relevant framework of such an allocation;
 - (b) indicate the steps taken to deal with non-compliance with any of the provisions of this Act or the conditions provided for in the relevant framework of such an allocation;
 - (c) indicate the extent to which the objectives and outputs of the allocation were achieved;

- (d) contain any other information that may be specified in the relevant framework for the allocation; and
 - (e) contain such other information as the National Treasury may determine.
- (5) The 2010/11 financial statements and annual report of a municipality must be prepared in accordance with the Municipal Finance Management Act.
- (6) The National Treasury may determine how transferring departments and receiving municipalities report on local government allocations on a quarterly basis, to facilitate the audit of allocations for both the national and municipal financial years.

Part 3

General matters relating to Schedule 4, 5, 6, 7 or 8 allocations

14. Publication of allocations and frameworks

- (1) The National Treasury must, within 14 days of this Act taking effect, publish in the *Gazette* -
- (a) the allocations per municipality, in respect of [Schedule 4](#) and [6](#) allocations;
 - (b) the indicative allocations per municipality, in respect of [Schedule 7](#) allocations;
 - (c) the indicative allocations for provinces and municipalities, along with their initial threshold and performance targets, in respect of [Schedule 8](#) allocations; and
 - (d) the framework for each [Schedule 4](#), [5](#), [6](#), [7](#) or [8](#) allocation.
- (2) The National Treasury must publish in the *Gazette* -
- (a) any revisions of or amendments to the frameworks published in terms of subsection (1);
 - (b) any virement which is made in accordance with the requirements of [section 6\(3\)](#) of this Act and the Public Finance Management Act;
 - (c) any revisions of or amendments to the allocations and frameworks published in terms of subsection (1) necessary to give effect to the conversion of a [Schedule 6](#) or a [Schedule 7](#) allocation in terms of [section 19](#);
 - (d) any re-allocations by the National Treasury in accordance with [section 18](#) or the transferring national officer in respect of the Expanded Public Works Programme Incentive Grant;

- (e) any revised allocations in respect of [Schedule 7](#) allocations; and
 - (f) any revised indicative allocations, performance and threshold targets for the Expanded Public Works Programme Incentive Grant.
- (3) The National Treasury may at any time, after consultation with or at the written request of a transferring national officer, revise or amend a framework published in terms of subsection (1) or (2), to correct any error or omission.
 - (4) An amendment, revision, virement or re-allocation takes effect on publication thereof in the *Gazette*.

15. Spending in terms of purpose and subject to conditions

- (1) Despite anything to the contrary contained in any law, an allocation referred to in [Schedule 4](#), [5](#), [6](#), [7](#) or [8](#) may only be utilised for the purpose stipulated in the Schedule concerned and in accordance with the framework published in terms of [section 14](#).
- (2) A receiving officer may not transfer any [Schedule 5](#) or [6](#) allocation or a portion of such an allocation to any other entity or other sphere of government for the performance of a function envisaged in terms of the allocation, unless the receiving officer has entered into a payment schedule with the entity or other sphere of government that will be performing the function, that has been approved by the National Treasury, and-
 - (a) it is a transfer that is approved in the budget of the receiving province or municipality or a framework published in terms of [section 14](#);
 - (b) it is a payment for services rendered or goods received, which services or goods were procured in accordance with the supply chain management policy or procurement policy of the relevant province or municipality and for which adequate documentation for payment has been received; or
 - (c) in the case of an advance payment or a transfer which is not consistent with the budget of the receiving province or municipality -
 - (i) the receiving officer has certified to the National Treasury that the transfer is not an attempt to artificially inflate its spending estimates and that there are good reasons for the advance payment or transfer; and
 - (ii) the National Treasury has approved the advance payment or transfer.
- (3) No public entity, other than Eskom Holdings Limited in respect of funds received from the Department of Energy and water boards in respect of funds received from the Department of Water Affairs for the implementation of [Schedule 7](#) allocations,

may receive funds for the provision of a municipal service or municipal function on behalf of a municipality from a national or provincial organ of state except via the municipality responsible for that service or function, unless the National Treasury approves otherwise in respect of municipalities it deems to have low capacity.

- (4) In respect of the Human Settlements Development Grant, a receiving officer and an accredited municipality must, by 31 May 2010, comply with the requirements of subsection (2), by -
 - (a) entering into a payment schedule; and
 - (b) submitting the payment schedule to the National Treasury for approval.
- (5) A receiving officer must request the National Treasury to amend the payment schedule referred to in subsection (4), in accordance with the procedure set out in [section 22](#), in instances where a transfer to an accredited municipality has been withheld or stopped in terms of [section 16](#) or [17](#).

16. Withholding of allocation

- (1) Subject to subsections (2) and (3), a transferring national officer may withhold the transfer of a [Schedule 4, 5 or 6](#) allocation, or any portion of such allocation, for a period not exceeding 30 days, if -
 - (a) the province or municipality does not comply with the provisions of this Act or conditions to which the allocation, as provided for in the relevant framework, is subject;
 - (b) roll-overs of conditional allocations approved by the National Treasury in accordance with [section 20](#) have not been spent; or
 - (c) expenditure on previous transfers during the financial year reflects significant under-spending, for which no satisfactory explanation is given.
- (2) The Health Professions Training and Development Grant and the National Tertiary Services Grant may not be withheld in terms of this section.
- (3) A transferring national officer must, seven working days or such shorter period as may be approved by the National Treasury, prior to withholding an allocation in terms of subsection (1) -
 - (a) give the relevant receiving officer-
 - (i) written notice of the intention to withhold the allocation; and

- (ii) an opportunity to submit written representations, within those seven days or that shorter period, as to why the allocation should not be withheld; and
- (b) inform the relevant provincial treasury and the National Treasury.
- (4) A notice contemplated in subsection (3) must include the reasons for withholding the allocation and the intended duration of the withholding.
- (5)
 - (a) The National Treasury may, when a transferring national officer is withholding an allocation in terms of subsection (1), instruct, or approve a request from, that transferring national officer to withhold an allocation for a period longer than 30 days, but not exceeding 120 days, if the withholding will -
 - (i) facilitate compliance with this Act or the conditions to which the allocation is subject; or
 - (ii) minimise the risk of under-spending.
 - (b) A transferring national officer must, when requesting the withholding of an allocation in terms of this subsection, submit proof of its compliance with subsection (3) and any representations received from the receiving officer, to the National Treasury.
 - (c) The transferring national officer must again comply with subsection (3) when the National Treasury issues an instruction or approves a request in terms of paragraph (a).
- (6)
 - (a) In respect of the Human Settlements Development Grant, a receiving officer may, in consultation with the transferring national officer, the relevant provincial treasury and the National Treasury, withhold a transfer to an accredited municipality, if the conditions set out in subsection (1) exist.
 - (b) A receiving officer, prior to withholding a transfer to an accredited municipality, must comply with the notice requirements stipulated in subsections (3) and (4).
 - (c) A receiving officer may request the transferring national officer to seek the approval of the National Treasury that a transfer to an accredited municipality be withheld for a period longer than 30 days, in terms of subsection (5).

17. Stopping of allocation

- (1) Despite [section 16](#), the National Treasury may, in its discretion or at the request of a transferring national officer, or a receiving officer in the case of the Human Settlements Development Grant, stop the transfer of a [Schedule 4](#), [5](#) or [6](#) allocation referred to in [section 16](#)(1) to a province or municipality -
 - (a) on the grounds of persistent and material non-compliance with-
 - (i) the provisions of this Act; or
 - (ii) a condition to which the allocation, as provided for in the relevant framework, is subject; or
 - (b) if the National Treasury anticipates that a province or municipality will substantially under-spend on that programme or allocation in the financial year.
- (2) The National Treasury must, when stopping an allocation in terms of this section-
 - (a) comply with the requirements set out in [section 16](#)(3)(a), and in respect of a municipality, also with the requirements of [section 38](#) of the Municipal Finance Management Act; and
 - (b) inform the relevant provincial treasury of its intention to stop the allocation.
- (3) Any stopping of an allocation contemplated in subsection (1) must, together with an explanatory memorandum, be published by the National Treasury in the *Gazette*.
- (4)
 - (a) The Minister may, by notice in the *Gazette*, approve that an allocation or any portion of such allocation stopped in terms of subsection (1), be utilised to meet that province's or municipality's outstanding statutory and contractual financial commitments.
 - (b) The utilisation of funds contemplated in this subsection is a direct charge against the National Revenue Fund.

18. Re-allocation of funds

- (1)
 - (a) The National Treasury may, when it stops a [Schedule 4](#), [5](#) or [6](#) allocation in terms of [section 17](#), after consultation with the transferring national officer and the relevant provincial treasury, determine that a portion of the allocation that will not be spent be re-allocated, as the same type of grant allocation as it was allocated originally, to one or more provinces or municipalities, on condition that the allocation will be spent in the financial year or the next financial year.

- (b) The re-allocation of a portion of an allocation or the full allocation on condition that the allocation will be spent in the next financial year, in terms of paragraph (a), must be deemed to be a roll-over approved by the National Treasury in terms of [section 20\(2\)\(a\)](#), and the roll-over process set out in Treasury Regulation 6.4.2 would not need to be followed.
- (2)
 - (a) Despite subsection (1), the National Treasury may, when an intervention in terms of the Constitution or [section 137](#), [139](#) or [150](#) of the Municipal Finance Management Act is taking place, on such conditions as it may determine, authorise-
 - (i) in relation to [section 100](#) of the Constitution, the transferring national officer to spend an allocation stopped in terms of [section 17](#) on behalf of the relevant province;
 - (ii) in relation to [section 139](#) of the Constitution and [sections 137](#) and [139](#) of the Municipal Finance Management Act, the intervening province to spend an allocation stopped in terms of [section 17](#) on behalf of the relevant municipality; or
 - (iii) in relation to [section 150](#) of the Municipal Finance Management Act, the relevant transferring national officer to spend an allocation stopped in terms of [section 17](#) on behalf of the relevant municipality.
 - (b) An allocation that is spent by the transferring national officer or intervening province referred to in paragraph (a) must, for the purposes of this Act, be regarded as a [Schedule 7](#) allocation from the date on which the authorisation is given.

19. Conversion of Schedule 6 and Schedule 7 allocations

- (1) The National Treasury may, in its discretion or at the request of the transferring national officer, convert an allocation listed in [Schedule 6](#) to become an allocation listed in [Schedule 7](#), or convert an allocation listed in [Schedule 7](#) to become an allocation listed in [Schedule 6](#), if the National Treasury is satisfied that the conversion will prevent under-spending on the allocation.
- (2) An allocation that is converted in terms of this section must be paid to or expended on behalf of the same municipality to which the allocation was originally made.
- (3) A conversion referred to in subsection (1) takes effect on the date of publication referred to in [section 14\(2\)\(c\)](#).
- (4) The National Treasury must inform the transferring national officer and each affected receiving municipality of a conversion.

20. Unspent conditional allocations

- (1) Despite the provisions of the Public Finance Management Act or the Municipal Finance Management Act relating to roll-overs, any conditional allocation, excluding the Gautrain Rapid Rail Link Grant and the Expanded Public Works Programme Incentive Grant, that is, in the case of a province, not spent at the end of a financial year or, in the case of a municipality, at the end of a municipal financial year, reverts to the National Revenue Fund, unless the relevant receiving officer can prove to the satisfaction of the National Treasury that the unspent allocation is committed to identifiable projects.
- (2) The National Treasury may, at the request of a transferring national officer, provincial treasury or municipality, approve -
 - (a) a roll-over from a conditional allocation to the next financial year; and
 - (b) spending of a portion of a conditional allocation on activities related to the purpose of that allocation, where the province or municipality projects significant unforeseeable and unavoidable over-spending on its budget.
- (3) Any funds which must revert to the National Revenue Fund in terms of subsection (1), and which have not been approved by the National Treasury to be retained in terms of subsection (2), must be repaid to the National Revenue Fund.
- (4) The National Treasury, in accordance with subsection (5), may set-off any funds which must be repaid to the National Revenue Fund in terms of subsections (1) and (3), but which have not been repaid-
 - (a) in the case of a province, against future conditional grant allocations to that province; and
 - (b) in the case of a municipality, against future equitable share or conditional grant allocations to that municipality.
- (5) Prior to the National Treasury setting-off any amounts against allocations to provinces or municipalities in terms of subsection (4), the National Treasury must give the relevant transferring national officer, province or municipality-
 - (a) written notice of the intention to set-off amounts against upcoming allocations; and
 - (b) an opportunity, within 14 days of receipt of the notice referred to in paragraph (a), to-

- (i) submit written representations that prove to the satisfaction of the National Treasury that the unspent allocation was either spent in accordance with the relevant framework, or is committed to identifiable projects;
 - (ii) propose alternative means acceptable to the National Treasury by which the unspent allocations can be repaid to the National Revenue Fund; and
 - (iii) propose an alternative payment schedule in terms of which the unspent allocations will be repaid to the National Revenue Fund.
- (6) A notice contemplated in subsection (5) must include the intended amount to be set-off against allocations, and the reasons for setting-off the amounts.
- (7) Despite anything else contained within this section, the retention of funds which should revert to the National Revenue Fund in terms of subsections (1) and (3), and which have not been approved by the National Treasury to be retained in terms of subsection (2), constitutes financial misconduct in terms of [section 34](#).

CHAPTER 4

MATTERS RELATING TO ALL ALLOCATIONS

21. Payment schedule

- (1)
 - (a) The National Treasury determines the payment schedule for the transfer of a province's equitable share allocation, after consultation with the head of the department in the provincial treasury.
 - (b) In determining the payment schedule, the National Treasury must take account of the monthly spending commitments of provinces and seek to minimise risk and debt servicing costs for national and provincial government.
 - (c) Despite paragraph (a), the National Treasury may, for cash management purposes relating to the corporation for public deposits account or when an intervention in terms of [section 100](#) of the Constitution is taking place, on such conditions as it may determine, advance funds to a province in respect of its equitable share or a portion of it which has not yet fallen due for transfer in accordance with the payment schedule.
 - (d) Any advances in terms of paragraph (c) must be set-off against transfers to the province which would otherwise become due in terms of that payment schedule.
- (2)

- (a) The National Treasury determines the payment schedule for the transfer of a municipality's equitable share allocation, after consultation with the accounting officer of the national department responsible for local government.
 - (b) Despite paragraph (a), the National Treasury, after consultation with the accounting officer of the national department responsible for local government, may, for cash management purposes in the municipality or when an intervention in terms of [section 139](#) of the Constitution or [section 137](#), [139](#) or [150](#) of the Municipal Finance Management Act is taking place, on such conditions as it may determine, approve a request or direct that the equitable share or a portion of it which has not yet fallen due for transfer in accordance with the payment schedule, be advanced to a municipality.
 - (c) Any advances in terms of paragraph (b) must be set-off against transfers to the municipality which would otherwise become due in terms of the applicable payment schedule.
- (3)
- (a) The National Treasury must approve the payment schedules for a [Schedule 4](#), [5](#), [6](#) or [8](#) allocation transferred to a province or municipality.
 - (b) The transferring national officer of a [Schedule 4](#), [5](#), [6](#) or [8](#) allocation must submit a payment schedule to the National Treasury for approval before 14 April 2010.
 - (c) Prior to the submission of a payment schedule in terms of paragraph (b), the transferring national officer must-
 - (i) in relation to a [Schedule 4](#) allocation, consult the relevant receiving officer;
 - (ii) in relation to the Gautrain Rapid Rail Link Grant, ensure that the payment schedule -
 - (aa) is consistent with the projected dates for payments to the private party in terms of the public-private partnership agreement entered into by the relevant province in accordance with regulations issued under the Public Finance Management Act; and
 - (bb) reflects the portion of any payments due under the agreement referred to in item (aa) payable from the allocation; and
 - (iii) in relation to a [Schedule 5](#) or [6](#) allocation, consult the relevant province or municipality.

- (4) The transferring national officer of a [Schedule 4, 5 or 6](#) allocation must provide the receiving officer with a copy of the approved payment schedule prior to making the first transfer in accordance therewith.

22. Amendment of payment schedule

- (1) Subject to subsection (2), a transferring national officer of a [Schedule 4, 5 or 6](#) allocation must, within seven days of the withholding or stopping of an allocation in terms of [section 16](#) or [17](#), amend a payment schedule as a result of the withholding or stopping of an allocation in terms of this Act and submit the amended payment schedule to the National Treasury, prior to any further transfers being made.
- (2) The National Treasury may, in the interest of better debt and cash-flow management or to deal with financial mismanagement or financial misconduct, slow spending or accelerated spending, amend any payment schedule for an allocation listed in [Schedule 2, 3, 4, 5 or 6](#) on notification to -
 - (a) the accounting officer of a provincial treasury, in the case of a provincial allocation; and
 - (b) the accounting officer of the national department responsible for local government, in the case of a local government allocation.
- (3) A payment schedule amended in terms of subsection (1) or (2) must take account of -
 - (a) the monthly spending commitments of provinces or municipalities;
 - (b) the revenue at the disposal of provinces or municipalities; and
 - (c) the minimisation of risk and debt servicing costs for all three spheres of government.
- (4) An amendment of a payment schedule in terms of subsection (2) prevails over any amendment made in terms of subsection (1).
- (5) The transferring national officer must immediately inform the receiving officer of any amendment to a payment schedule in accordance with subsection (1) or (2).

23. Transfers made in error or fraudulently

- (1) Despite anything to the contrary contained in any law, the transfer of an allocation to a province, municipality or public entity in error or fraudulently is regarded as not legally due to that province, municipality or public entity, as the case may be.
- (2) A transfer contemplated in subsection (1) must be recovered, without delay, by the responsible transferring national officer.

- (3) Despite subsection (2), the National Treasury may instruct that the recovery contemplated in subsection (2) be effected by set-off against future transfers to the province, municipality or public entity, which would otherwise become due in accordance with a payment schedule.

24. Allocations not listed in Schedules

- (1) An allocation, other than-
 - (a) a re-allocation referred to in [section 18](#) or in respect of the Expanded Public Works Programme Incentive Grant; or
 - (b) a revised indicative allocation in respect of a [Schedule 7](#) or [8](#) grant, which is not listed in the Schedules referred to in [sections 7](#) and [8](#), may only be made in terms of [section 6\(3\)](#).
- (2) The National Treasury must publish the allocations and frameworks for such allocations in the *Gazette*, prior to the transfer of any funds to a province or municipality.

25. Authorisation of expenditure

- (1) Despite anything to the contrary contained in any law, to defray expenditure of an exceptional nature which cannot, without serious prejudice to the public interest, be postponed to a future appropriation of funds -
 - (a) the Minister may, in accordance with [section 16](#) of the Public Finance Management Act and subject to conditions, make an allocation to a province or municipality from the National Revenue Fund; and
 - (b) the MEC for Finance in a province may, in accordance with [section 25](#) of the Public Finance Management Act and subject to conditions, make an allocation to a municipality from the Provincial Revenue Fund.
- (2) The relevant treasury must publish any allocation and the conditions subject to which the allocations were made, if any, in the *Gazette*.
- (3) In addition to what is provided in subsection (1), and despite any contrary provision contained in any law, the Minister may approve expenditure qualifying for inclusion in an adjustments budget in terms of [section 30\(2\)](#) of the Public Finance Management Act before such an adjustments budget is passed.
- (4) Expenditure approved in terms of subsection (3) -

- (a) may not exceed the total amount set aside as a contingency reserve in the national annual budget for the current financial year;
 - (b) is a direct charge against the National Revenue Fund; and
 - (c) must be included either in the next national adjustments budget or in other appropriation legislation tabled in the National Assembly for the financial year in which the expenditure is authorised.
- (5) An approval granted by the Minister in respect of money to be appropriated for expenditure already announced by the Minister during the tabling of the annual budget, may be made subject to conditions.
- (6) The application of this section may be regulated by regulation or treasury instruction.

26. Preparations for next financial year and 2012/13 financial year

- (1)
- (a) A provincial department responsible for implementing the Infrastructure Grant to Provinces must, by a date determined by the provincial treasury, submit detailed infrastructure plans in a format determined by the National Treasury, to the provincial treasury, and the provincial treasury must submit the infrastructure plans to the National Treasury by 31 August 2010.
 - (b) The infrastructure plans must indicate the prioritised projects to be funded from the allocations for the next financial year and the 2012/13 financial year, as set out in Column B of [Schedule 4](#).
 - (c) The provincial treasury must -
 - (i) review the infrastructure plans of all receiving officers, and must assess the extent to which those plans are aligned to the Integrated Development Plan of each affected municipality, and submit the integrated plans to the National Treasury by 27 August 2010, together with the provincial budget submission;
 - (ii) ensure that the infrastructure budgets of the receiving departments include an allocation for project design and the initiation of procurement for projects to be implemented in the next financial year and the 2012/13 financial year, and that infrastructure budgets are aligned with the cash flow requirements of the planned projects in a given year; and
 - (iii) ensure that the infrastructure budgets of the receiving departments make adequate provision for operations and maintenance associated with newly constructed or upgraded infrastructure.

(2)

- (a) A category C municipality that receives an equitable share, a conditional allocation, or both, in terms of this Act must, using the envisaged conditional allocations to that municipality for the next financial year and the 2012/13 financial year as set out in Column B of the Schedules, by 1 October 2010 -
 - (i) agree on the provisional allocations and the projects to be funded from those allocations in the next financial year and the 2012/13 financial year with each category B municipality within the category C municipality's area of jurisdiction; and
 - (ii) submit to the transferring national officer-
 - (aa) the provisional allocations referred to in subparagraph (i); and
 - (bb) the prioritised projects contemplated in subparagraph (i) listed per municipality to be funded from the allocations for the next financial year and the 2012/13 financial year.
- (b) Where a category C municipality and a category B municipality cannot agree on the allocations and projects referred to in paragraph (a), the category C municipality must request the relevant transferring national officer to facilitate agreement.
- (c) The transferring national officer must take all necessary steps to facilitate agreement as soon as possible, but no later than 60 days after receiving a request referred to in paragraph (b).
- (d) Any proposed amendment or adjustment of the allocations published in terms of [section 29\(3\)\(b\)](#) must be agreed with the relevant category B municipality, the transferring national officer and the National Treasury, prior to the submission of the allocations referred to in paragraph (a)(ii).
- (e) Should agreement not be reached between the category C municipality and the category B municipality on the provisional allocations and projects referred to in paragraph (a) prior to 1 October 2010, the National Treasury may proceed to determine the provisional allocations and provide those provisional allocations to the municipalities concerned and the transferring national officer.
- (f)
 - (i) The final allocations based on the provisional allocations referred to in paragraphs (a)(i) and (ii) and (e) must be submitted to the National Treasury by 7 December 2010.
 - (ii) If the transferring national officer fails to submit the allocations referred to in subparagraph (i) by 7 December 2010, the National Treasury may

determine the appropriate allocations, taking into consideration the envisaged allocations for the next financial year.

(3)

- (a) The transferring national officer of a conditional allocation, using the envisaged conditional allocations for the next financial year and the 2012/13 financial year as set out in Column B of the Schedules to this Act, must, by 1 October 2010, submit to the National Treasury for approval -
 - (i) the provisional allocations to each province or municipality in respect of new conditional allocations to be made in the next financial year;
 - (ii) any amendments to the envisaged allocations for each province or municipality set out in Column B of the Schedules in respect of existing conditional allocations; and
 - (iii) the draft frameworks for the allocations referred to in subparagraphs (i) and (ii) in the format to be determined by the National Treasury.
- (b) Any proposed amendment or adjustment for the next financial year of the allocation criteria of an existing conditional allocation must be agreed with the National Treasury prior to the submission of the provisional allocations and draft frameworks referred to in paragraph (a)(ii) and (iii).
- (c) The National Treasury may, if the transferring national officer fails to comply with paragraph (a) by 1 October 2010, determine-
 - (i) the provisional allocations referred to in paragraph (a)(i);
 - (ii) any amendments to the envisaged allocations referred to in paragraph (a)(ii); and
 - (iii) the draft frameworks for the allocations referred to in paragraph (a)(m),and submit that information to the relevant provinces or municipalities.
- (d)
 - (i) The final allocations based on the provisional allocations referred to in paragraph (a)(i) and (ii) must be submitted to the National Treasury by 7 December 2010.
 - (ii) If the transferring national officer fails to submit the allocations referred to in subparagraph (i) by 7 December 2010, the National Treasury may determine the appropriate allocations, taking into consideration the envisaged allocations for the next financial year.

- (4) The National Treasury may, in preparation for the next financial year, instruct transferring national officers, receiving officers and municipalities to submit to it such plans and information for any conditional allocation as it may determine at specified times prior to the start of the next financial year.

27. Expenditure prior to commencement of Division of Revenue Act, 2011

Despite [sections 3\(2\)](#), [7\(2\)](#) and [8\(2\)](#), if the annual Division of Revenue Act for the next financial year has not commenced before or on 1 April 2011, the National Treasury may determine that an amount not exceeding 45 per cent of the total amount of each allocation made in terms of [sections 3\(1\)](#), [7\(1\)](#) and [8\(1\)](#) be transferred to the relevant province or municipality as a direct charge against the National Revenue Fund.

CHAPTER 5 DUTIES OF MUNICIPALITIES, PROVINCIAL TREASURIES AND NATIONAL TREASURY

28. Duties of municipalities

- (1)
 - (a) In addition to the requirements of the Municipal Finance Management Act, the accounting officer of a category C municipality must, no later than 14 April 2010, submit to the National Treasury and all category B municipalities within that municipality's area of jurisdiction, the budget, as tabled in accordance with [section 16](#) of the Municipal Finance Management Act, for the 2010/11 municipal financial year, and the two following municipal financial years.
 - (b) The budget must indicate all allocations from its equitable share and conditional allocations to be transferred to each category B municipality within the category C municipality's area of jurisdiction and disclose the criteria for allocating funds between the category B municipalities.
- (2) A category C municipality that is providing a municipal service must, before implementing any capital project for water, electricity, roads or any other municipal service, consult the category B municipalities within whose area of jurisdiction the project will be implemented, and agree in writing which municipality is responsible for the operational costs and the collection of user fees.
- (3) A category C municipality must ensure that it does not duplicate a function currently performed by a category B municipality, and must transfer funds for the provision of services, including basic services, to the relevant category B municipality that is providing municipal services, irrespective of the fact that-
 - (a) the category C municipality retains the power or function in terms of the Municipal Structures Act; and

- (b) a service delivery agreement for the provision of services by the category B municipality on behalf of the category C municipality has not been concluded.
- (4) A category B municipality which is not authorised to perform a function in terms of the Municipal Structures Act may not extend the scope or type of services that it currently provides, without-
 - (a) entering into a service delivery agreement with the category C municipality which is authorised to perform the function in terms of the Municipal Structures Act; or
 - (b) obtaining the legal authorisation to perform the function in terms of the Municipal Structures Act.
- (5)
 - (a) A category C municipality and a category B municipality must, before the commencement of a municipal financial year, agree to a payment schedule in respect of the allocations referred to in subsection (1)(b) to be transferred to the category B municipality in that financial year, and the category C municipality must submit the payment schedule to the National Treasury.
 - (b) A category C municipality must make transfers in accordance with the payment schedule submitted in terms of paragraph (a).
- (6)
 - (a) The National Treasury may withhold or stop any allocation to the category C municipality and reallocate the allocation to the relevant category B municipalities if a category C municipality fails to -
 - (i) make allocations referred to in subsection (1)(b);
 - (ii) reach an agreement contemplated in subsection (2); or
 - (iii) submit a payment schedule in accordance with subsection (5)(a).
 - (b) [Sections 16](#)(3) and [17](#)(3) and (4) of this Act and [section 216](#) of the Constitution apply, with the necessary changes, to the withholding and stopping of an allocation in accordance with paragraph (a).
 - (c) The National Treasury may, where it stops an allocation in terms of this section, after consultation with the transferring national officer, determine that a portion of the allocation that will not be spent be reallocated to one or more municipalities, on condition that the allocation will be spent in the financial year or the next financial year.

- (7) A municipality must ensure that any allocation made to it in terms of this Act, or by a province or another municipality, that is not reflected in its budget as tabled in accordance with [section 16](#) of the Municipal Finance Management Act, is reflected in its budget to be considered for approval in accordance with [section 24](#) of the Municipal Finance Management Act.
- (8) In addition to the requirements of the Municipal Finance Management Act, the disposal by a municipality of a stadium that was built or upgraded with funding allocated in terms of the FIFA World Cup Stadiums Development Grant is subject to the approval of the transferring national officer for the FIFA World Cup Stadiums Development Grant and the National Treasury.
- (9) In respect of the Human Settlements Development Grant, the financial and non-financial reporting that is required to be submitted by the accredited municipality in terms of the grant framework must relate to the requirements specified in the grant framework.
- (10) An accredited municipality must submit the required monthly financial and quarterly performance reports to the receiving officer, the transferring national officer and the National Treasury.

29. Duties of provincial treasuries

- (1) The provincial treasury must reflect [Schedule 5](#) allocations separately in the province's appropriation Bill or a schedule to its appropriation Bill.
- (2)
 - (a) The provincial treasury must, on the same day that its budget is tabled in the provincial legislature, or a later date approved by the National Treasury, but not later than 14 April 2010, publish the following in the *Gazette*:
 - (i) the indicative allocation per municipality for every allocation to be made by the province to municipalities from the province's own funds;
 - (ii) the indicative allocation to be made per school in the province;
 - (iii) the indicative allocation to any national or provincial public entity for the implementation of a programme funded by a [Schedule 5](#) allocation on behalf of a province or for assistance provided to the province in implementing such a programme;
 - (iv) the envisaged division of the allocation contemplated in subparagraphs (i) to (iii), in respect of each municipality and school, for the next financial year and the 2012/13 financial year;

- (v) the conditions and other information in respect of the allocations referred to in subparagraphs (i), (ii) and (iii) to facilitate performance measurement and the use of required inputs and outputs; and
 - (vi) the budget of each hospital in a format determined by the National Treasury.
 - (b) The allocations and budgets referred to in paragraph (a) must be deemed to be final if the legislature passes the appropriation Bill without any amendments.
 - (c) In the event that the legislature amends the appropriation Bill, the accounting officer of the provincial treasury must publish amended allocations and budgets in the *Gazette* within 14 days of the legislature passing the appropriation Bill, which allocations must align to the appropriation Bill as passed by the legislature, and which must be deemed to be final.
- (3)
- (a) Despite anything to the contrary contained in any law, a provincial treasury may, in accordance with a framework determined by the National Treasury, amend the allocations referred to in subsection (2) or make additional allocations to municipalities that were not published in terms of subsection (1) or (2).
 - (b) The amended allocations and allocations referred to in paragraph (a) must be included in the province's budget documents that are submitted with an adjustment appropriation Bill to its legislature.
 - (c) The provisions of subsection (2), with the necessary changes, apply in respect of allocations referred to in paragraph (b).
- (4) Where a function for which a province receives a [Schedule 5](#) allocation is assigned to a municipality during a financial year and the province has not appropriated funds to that municipality for the performance of that function, the province must transfer the allocation to the municipality in terms of [section 226\(3\)](#) of the Constitution as a direct charge against that province's Revenue Fund and must inform the National Treasury of the transfer.
- (5)
- (a) A provincial treasury must, as part of its consolidated monthly report in terms of [section 32](#) of the Public Finance Management Act, in the format determined by the National Treasury, report on -
 - (i) actual transfers received by the province from national departments;
 - (ii) actual expenditure on such allocations, excluding [Schedule 4](#) allocations, up to the end of that month; and

- (iii) actual transfers made by the province to municipalities, and actual expenditure by municipalities on such allocations.
 - (b) The report contemplated in paragraph (a) must include reports for each quarter, and be in the format and include the information as may be determined by the National Treasury.
- (6) A provincial treasury must-
- (a) ensure -
 - (i) that a payment schedule is agreed between each provincial department and receiving institution referred to in subsection (2)(a); and
 - (ii) that transfers are made in accordance therewith; and
 - (b) submit the payment schedules to the National Treasury within 14 days of the commencement of the financial year.

30. Duties of National Treasury

- (1) The National Treasury must, within 14 days of this Act taking effect, submit a notice to all transferring national officers, containing the details of the bank accounts of each province and municipality.
- (2) The National Treasury must, together with the monthly report contemplated in [section 32](#)(2) of the Public Finance Management Act, publish a report on actual transfers of all allocations listed in the Schedules referred to in [sections 7](#) and [8](#) or made in terms of [section 24](#).
- (3) The National Treasury may, in any report it publishes that aggregates reports published by provincial treasuries contemplated in [section 71](#)(7) of the Municipal Finance Management Act, and in any report in respect of municipal finances, include a report on the equitable share and conditional allocations provided for in this Act.

CHAPTER 6 GENERAL

31. Allocations by public entities to provinces or municipalities

The accounting officer of a provincial department or municipality that receives funds from a public entity as a grant, sponsorship or donation must disclose in its financial statements the purpose and amount of each such grant, sponsorship or donation received.

32. Liability for costs incurred in violation of principles of cooperative governance and intergovernmental relations

- (1) An organ of state involved in an intergovernmental dispute regarding any provision of this Act or any division of revenue matter or allocation must, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other organ of state concerned, including exhausting all mechanisms provided for the settlement of disputes in relevant legislation.
- (2) In the event that a dispute is referred back by a court in accordance with [section 41](#)(4) of the Constitution, due to the court not being satisfied that the organ of state approaching the court has complied with subsection (1), the expenditure incurred by that organ of state in approaching the court must be regarded as fruitless and wasteful.
- (3) The amount of any such fruitless and wasteful expenditure must, in terms of a prescribed procedure, be recovered without delay from the person who caused the organ of state not to comply with the requirements of subsection (1).

33. Unauthorised and irregular expenditure

- (1) The following transfers constitute unauthorised expenditure in terms of the Public Finance Management Act and the Municipal Finance Management Act, as the case may be, where relevant:
 - (a) a transfer prohibited in terms of [section 15](#)(2) of this Act; or
 - (b) a transfer by a transferring national officer to a bank account of a province or municipality that is not-
 - (i) the primary bank account;
 - (ii) in respect of provinces, a corporation for public deposits account; or
 - (iii) in respect of the Gautrain Rapid Rail Link Grant, the dedicated banking account configuration established for the transfer of the Gautrain Rapid Rail Link Grant in accordance with the directive issued by the National Treasury under section 10(2)(a) of the Division of Revenue Act, 2006 (Act No. 2 of 2006).
- (2) Any transfer made or spending of an allocation in contravention of this Act or a framework published in terms of this Act, constitutes irregular expenditure in terms of the Public Finance Management Act and the Municipal Finance Management Act.

34. Financial misconduct

- (1) Despite anything to the contrary contained in any law, any serious or persistent non-compliance with a provision of this Act or a framework published in terms of this Act, and in particular, any non-compliance with [section 26](#), constitutes financial misconduct.
- (2) [Section 84](#) of the Public Finance Management Act and [section 171](#)(4) of the Municipal Finance Management Act apply in respect of financial misconduct contemplated subsection (1).

35. Delegations and assignments

- (1) The Minister may, in writing, delegate any of the powers entrusted to the National Treasury in terms of this Act and assign any of the duties imposed on the National Treasury in terms of this Act, to an official of the National Treasury.
- (2) A delegation or assignment in terms of subsection (1) to an official of the National Treasury-
 - (a) is subject to any limitations or conditions that the Minister may impose;
 - (b) may authorise that official to subdelegate, in writing, the delegated power or assigned duty to another National Treasury official; and
 - (c) does not divest the National Treasury of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The Minister may confirm, vary or revoke any decision taken by an official as a result of a delegation, subject to any rights that may have vested as a consequence of the decision.

36. Exemptions

- (1) The National Treasury may, on written application by a transferring national officer, province, or municipality, exempt such officer, province, or municipality in writing from complying with a provision of this Act.
- (2) Any exemption granted in terms of subsection (1) must set out the period and conditions, if any, to which it is subject and must be published in the *Gazette*.

37. Regulations

The Minister may, by notice in the *Gazette*, make regulations regarding-

- (a) anything which must or may be prescribed in terms of this Act; and

- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

38. Repeal of laws

- (1) Subject to subsection (2), the Division of Revenue Act, 2009 (Act No. 12 of 2009), with the exception of sections 33 and 47, is hereby repealed.
- (2) The repeal of the Division of Revenue Act, 2009 (Act No. 12 of 2009), does not affect any duty or obligation set out in that Act, the execution of which is still outstanding.

39. Short title and commencement

This Act is called the Division of Revenue Act, 2010, and takes effect on 1 April 2010 or the date of publication thereof by the President in the *Gazette*, whichever is the later date.

[SCHEDULE 1](#)

EQUITABLE DIVISION OF REVENUE RAISED NATIONALLY AMONG THE THREE SPHERES OF GOVERNMENT

[SCHEDULE 2](#)

DETERMINATION OF EACH PROVINCE'S EQUITABLE SHARE OF THE PROVINCIAL SPHERE'S SHARE OF REVENUE RAISED NATIONALLY (as a direct charge against the National Revenue Fund)

[SCHEDULE 3](#)

DETERMINATION OF EACH MUNICIPALITY'S EQUITABLE SHARE OF THE LOCAL GOVERNMENT SPHERE'S SHARE OF REVENUE RAISED NATIONALLY

[SCHEDULE 4](#)

ALLOCATIONS TO PROVINCES TO SUPPLEMENT THE FUNDING OF PROGRAMMES OR FUNCTIONS FUNDED FROM PROVINCIAL BUDGETS

[SCHEDULE 5](#)

SPECIFIC PURPOSE ALLOCATIONS TO PROVINCES

[SCHEDULE 6](#)

SPECIFIC PURPOSE ALLOCATIONS TO MUNICIPALITIES

[SCHEDULE 7](#)

ALLOCATIONS-IN-KIND TO MUNICIPALITIES FOR DESIGNATED SPECIAL PROGRAMMES

[SCHEDULE 8](#)

INCENTIVES TO PROVINCES TO MEET TARGETS WITH REGARDS TO PRIORITY
GOVERNMENT PROGRAMMES