

STAATSKOERANT, 22 AUGUSTUS 2008

No. 31346

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NATIONAL TREASURY

No. R. 878 22 August 2008

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 MUNICIPAL
ASSET TRANSFER REGULATIONS

PART 1: DECISION -MAKING PROCESS FOR MUNICIPALITIES

TRANSFER OR DISPOSAL OF NON-EXEMPTED CAPITAL ASSETS

5. (1) A municipality may transfer or dispose of a non-exempted capital asset only after

(a) the accounting officer has in terms of regulation 6 conducted a public participation process to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of the Act; and

(b) the municipal council -

(i) has made the determinations required by section 14(2)(a) and (b); and

FOOTNOTE 10: In terms of section 14(2)(a) and (b) the council

must (a) decide on reasonable grounds that the capital asset is not needed to provide the minimum level of basic municipal services and (b) consider the fair market value of the asset and the economic and community value to be received in exchange for the capital asset.

(ii) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

Subregulation (1)(a) must be complied with only if the capital asset (2) proposed to be transferred or disposed of is a high value capital asset. If the combined value of any capital assets a municipality intends to transfer or dispose of in any financial year exceeds five

per cent of the total value of its assets, as determined from its latest available audited annual financial statements, subregulation (l)(a) must be complied with in relation to all the capital assets proposed to be transferred or disposed of during that year.

(3) (a) Only the municipal council may authorise the public participation process referred to in subregulation (l)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating -

(i) the valuation of the capital asset to be transferred or disposed of and the method of valuation used to determine that valuation;

(ii) the reasons for the proposal to transfer or dispose of the capital asset;

(iii) any expected benefits to the municipality that may result from the transfer or disposal;

(iv) any expected proceeds to be received by the municipality from the transfer or disposal; and

(v) any expected gain or loss that will be realised or incurred by the municipality arising from the transfer or disposal.

(4) The value of a capital asset must for purposes of subregulation (3)(b)(i) be determined in accordance with the accounting standards that the municipality is required by legislation to apply in preparing its annual financial statements.

(5) In the absence of sufficient guidance in those accounting standards regarding the valuation of capital assets, any of the following valuation methods must be applied:

(a) historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the proposed date of transfer or disposal;

(b) fair market value of the asset;

(c) depreciated replacement cost of the asset; or

(d) realisable value of the asset.

(6) A municipal council may delegate to the accounting officer its power to make the determinations referred to in subregulation (l)(b)(i) and to give the approval referred to in subregulation (l)(b)(ii) in respect of movable capital assets below a value determined by the municipal council.

PUBLIC PARTICIPATION PROCESS FOR MUNICIPALITIES

6. If the municipal council has in terms of regulation 5(3)(a) authorised the accounting officer to conduct a public participation process in connection with any proposed transfer or disposal of a high value capital asset or other asset referred to in regulation 5(2), the accounting officer must at least 60 days before the meeting of the council at which the determinations referred to in regulation 5(l)(b) are to be considered-

(a) in accordance with section 21A of the Municipal Systems Act -

(i) make public the proposal to transfer or dispose of the capital asset together with the information statement referred to in regulation 5(3)(b); and

(ii) invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed transfer or disposal of the capital asset; and

(b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

CONSIDERATION OF PROPOSALS TO TRANSFER OR DISPOSE OF NON-EXEMPTED CAPITAL ASSETS

7. The municipal council must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 5(l)(b)(i) and (ii), take into account -

(a) whether the capital asset may be required for the municipality's own use at a later date;

- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
- (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
- (k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

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