

MUNICIPAL LOANS POLICY

[1] PURPOSE OF POLICY

- [a] The purpose of this policy is to determine the conditions applying to the raising of both short and long term loans by the municipality.

- [b] In applying this policy, the municipality must take cognizance of and adhere to the provisions of Section 230A of the Constitution which provides that a Council may, in accordance with national legislation –
 - [i] raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year; and

 - [ii] bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality.

[2] DEFINITIONS

In this policy –

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

“accounting officer” means the Municipal Manager acting in the capacity of accounting officer of the municipality;

“allocation”, means –

- [a] the municipality’s share of the local government’s equitable share referred to in section 214 [1] [a] of the Constitution;

- [b] an allocation of money to the municipality in terms of section 214 [1] [c] of the Constitution;
- [c] an allocation of money to the municipality in terms of a provincial budget; or
- [d] an allocation of money to the municipality by an organ of state, including another Municipality, otherwise than in compliance with a commercial or other business transaction;

“basic municipal services” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment;

“Council” means the Council of the Municipality referred to in section 18 of the Municipal Structures Act, 1998 [Act No. 117 of 1998],

“financing agreement” includes any loan agreement, lease, instalment purchase contract or hire purchase arrangement under which a municipality undertakes to repay a long-term debt over a period of time;

“financing costs” include:

- [a] capitalised interest for a reasonable initial period;
- [b] costs associated with security arrangements in accordance with paragraph 8 of this policy;
- [c] discounts and fees in connection with the relevant financing;
- [d] fees for legal, financial advisory, trustee, credit rating and other services directly connected to the financing; and
- [e] costs connected to the sale or placement of debt, and costs for printing and publication directly connected to the financing;
- [f] costs of professional services directly related to the capital expenditure funded in terms of this policy; and
- [g] such other costs as may be prescribed.

“lender” means a person who provides debt finance to the municipality;

“long-term debt” means debt repayable over a period exceeding one year;

“prescribed” means prescribed by or in terms of the Act;

“Mayor” means the Mayor of the municipality as defined in the Act;

“municipal debt instrument” means any note, bond, debenture or other evidence of indebtedness issued by the municipality, including dematerialised or electronic evidence of indebtedness intended to be used in trade;

“security” means any mechanism intended to secure the interest of a lender or investor and includes any of the mechanisms referred to in this policy;

“short-term debt” means debt repayable over a period not exceeding one year.

[3] SHORT-TERM DEBT

[a] The municipality may incur short-term debt only when necessary to bridge –

[i] shortfalls within a financial year during which the debt is incurred, in expectation of specific and realistic anticipated income to be received within that financial year; or

[ii] capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.

[b] The municipality may incur short-term debt only if –

[i] a resolution of the council, signed by the Mayor, has approved the debt agreement; and

[ii] the accounting officer has signed the agreement or other document which creates or acknowledges the relevant debt.

- [c]** The Council may –
 - [i]** approve a short term debt transaction individually; or
 - [ii]** approve an agreement with a lender for a short term credit facility to be accessed as and when required, including a line of credit or bank overdraft facility.
- [d]** A resolution approving the terms of an agreement contemplated in subparagraph [c] must specify the credit limit.
- [e]** A resolution must be passed by the Council whenever the agreement contemplated in subparagraph [c] is changed.
- [f]** If the Council approves a credit facility that is limited to emergency use, the accounting officer must notify it in writing as soon as practical of the amount, duration and cost of any debt incurred in terms of such a credit facility as well as options for repaying such debt.
- [g]** The municipality –
 - [i]** must pay off short-term debt within the financial year in which it is incurred; and
 - [ii]** may not renew or refinance short-term debt where such renewal or refinancing will have the effect of extending the short term debt into a new financial year.

[5] RESPONSIBILITIES OF LENDER

- [a]** Subject to subparagraph [c], no lender may wilfully extend credit to the municipality for the purpose of renewing or refinancing short-term debt that must be paid off in the financial year in which it is incurred.

- [b]** If a lender wilfully extends credit to a municipality in contravention of subparagraph [a], the municipality is not bound to repay the loan or interest on the loan.

- [c]** Subparagraph [b] does not apply if the lender –
 - [i]** relied in good faith on written representations of the municipality as to the purpose of the borrowing; and

 - [ii]** did not know and had no reason to believe that the borrowing was for the purpose of renewing or refinancing short-term debt.

[6] LONG-TERM DEBT

- [a]** Subject to subparagraph [b], the municipality may incur long-term debt only for the purpose of –
 - [i]** capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of local government as set out in section 152 of the Constitution; or

 - [ii]** re-financing existing long-term debt.

- [b]** The long-term debt contemplated in subparagraph [a] may be incurred only if –
- [i]** such existing long-term debt was lawfully incurred;
 - [ii]** the re-financing does not extend the term of the debt beyond the useful life of the property, plant or equipment for which the money was originally borrowed;
 - [iii]** the net present value of projected future payments [including principal and interest payments] after re-financing is less than the net present value of projected future payments before re-financing;
 - [iv]** the discount rate used in projecting the net present value referred to in subparagraph [c] and any assumptions in connection with the calculations, are reasonable and in accordance with criteria set out in any prescribed framework.
 - [v]** the Council has, by resolution, approved the debt arrangement and the resolution has been signed by the Mayor;
 - [vi]** the accounting officer has signed the agreement or other document that creates or acknowledges the debt;
 - [vii]** the proposed long-term debt is consistent with its capital budget;
and
 - [viii]** the accounting officer has complied with the requirements contemplated in section 21A of the Municipal Systems Act, 2000.

[c] The long-term debt contemplated in subparagraph [a] may be incurred only if the accounting officer, in accordance with the provisions of section 21A of the Municipal Systems Act, 2000, has –

[i] at least 14 days prior to the meeting of the Council at which approval for the debt is to be considered, made public an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided;

[ii] invited the public to submit written comments or representations to the Council in respect of the proposed debt;

[iii] has submitted a copy of the information statement referred to in subparagraph [c] [i] to the Council at least 14 days prior to the meeting at which the resolution referred to in this subparagraph is to be adopted, together with particulars of –

[aa] the essential repayment terms, including the anticipated debt repayment schedule; and

[bb] the anticipated total cost in connection with such debt over the repayment period.

[7] CONDITIONS APPLYING TO BOTH SHORT AND LONG-TERM DEBT

The municipality may incur debt only if –

[a] the debt is denominated in Rand and is not indexed to, or affected by fluctuations in the value the Rand against any foreign currency; and

[b] paragraph 8 of this policy has been complied with if security is to be provided by the municipality.

[8] SECURITY

[a] The municipality may, by resolution of the Council subject to subparagraphs [c], [d] and [e], provide security –

[i] in respect of any of its debt obligations;

[ii] in respect of its contractual obligations undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the municipality or such other person for the purpose of achieving the objects of local government in terms of section 152 of the Constitution; or

[iii] in the form of a lien, pledge, mortgage, cession or any other hypothecation of an asset or right or by giving any other form of collateral;

[b] The municipality may, in respect of security provided as contemplated in subparagraph [a] –

[i] undertake to effect payment directly from money or sources that may become available and authorise the lender or investor direct access to such sources to ensure payment of the secured debt or the performance of the secured obligations, provided that this form of security may not detract from the municipality's obligations with regard to its primary bank account;

- [ii]** undertake to deposit funds with the lender, investor or third party as security;
- [iii]** agree to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders or investors, including revenue intercepts, payments into dedicated accounts or other payment mechanisms or procedures;
- [iv]** cede as security any category of revenue or rights to future revenue;
- [viii]** undertake to have disputes resolved through mediation, arbitration or other dispute-resolution mechanisms;
- [ix]** undertake to retain revenues or specific municipal tariffs or other charges, fees or funds at a particular level or at a level sufficient to meet its financial obligations;
- [x]** undertake to make provision in its budgets for the payment of its financial obligations, including capital and interest;
- [xi]** agree to restrictions on debt that the municipality may incur in future until the secured debt is settled or the secured obligations are met; and
- [x]** agree to such other arrangements as the municipality may consider necessary and prudent.

- [c]** The Council resolution authorising the provision of security –
 - [i]** must determine whether the asset or right with respect to which the security is provided is necessary for providing the minimum level of basic municipal services; and
 - [ii]** must indicate the manner in which the availability of the asset or right for the provision of the minimum level of basic municipal services contemplated in subparagraph [i] will be protected.
- [d]** If the Council by resolution has determined that the asset or right is necessary for providing the minimum level of basic municipal services, neither the party to whom the municipal security is provided, nor any successor or assignee of such party may, in the event of a default by the municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic municipal services.
- [e]** A determination in terms of subparagraph [c] that an asset or right is not necessary for providing the minimum level of basic municipal services is binding on the municipality until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

[9] DISCLOSURE

- [a]** An official borrowing money on behalf of a municipality must, when interacting with a prospective lender or when preparing documentation for consideration by a prospective investor –

[i] disclose all known information that may be material to the decision of that prospective lender or investor; and

[ii] take reasonable care to ensure the accuracy of any information disclosed.

[b] A lender or investor may rely on written representations of the municipality signed by the accounting officer, if the lender or investor did not know and had no reason to believe that those representations were false or misleading.

[10] MUNICIPAL GUARANTEES

The municipality may not issue any guarantee for any commitment or debt of any organ of state or person except if the guarantee concerned is within the limits specified in its approved budget.