



## national treasury

Department:  
National Treasury  
**REPUBLIC OF SOUTH AFRICA**

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**FROM: Mr J Hattingh, Tel:** 012 315 5020, **Email:** Jan.Hattingh@treasury.gov.za

**Ref No:** FS194/6

**Mr Sam Makhubu**  
Municipal Manager  
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Dear Mr Makhubu

**2<sup>ND</sup> NOTIFICATION - NON-COMPLIANCE TO SECTIONS 18, 41, 65, 74 AND 126 OF THE MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT NO. 56 OF 2003) (MFMA) AND INTENTION TO INVOKE SECTION 216(2) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT NO. 108 OF 1996) TOGETHER WITH MFMA SECTIONS 38 AND 171**

***Both the National Treasury's 30 September 2022 letter***, relating to the persistent adoption of an unfunded budget by your municipality and the municipality's related contravention of the MFMA ***as well as MFMA Budget Circular no. 112 (issued 06 December 2021)***, advised you of the National Treasury's intention to invoke section 216(2) of the Constitution parallel to MFMA sections 38 and 171 respectively, and ***have reference.***

MFMA Budget Circular no. 112 set-out the specific criteria the National Treasury will consider prior to the release of the 2022/23 Local Government Equitable Share (LGES) and was communicated to all municipalities, including your municipality. The MFMA Budget Circular was clear in that the municipality's failure to comply with the criteria set out in Paragraph 8 (Transfers to Municipalities) will result in National Treasury invoking section 216(2) of the Constitution parallel to MFMA section 38. MFMA section 38 empowers the National Treasury to withhold a municipality's equitable share if the municipality commits a serious or persistent breach of the measures established in terms of Section 216(2) of the Constitution which includes reporting obligations set out in the MFMA and National Treasury's requests for information in terms of MFMA section 74.

Both our MFMA Budget Circular no. 112 (06 December 2021) and our 30 September 2022 letter provided opportunities for the municipality to urgently self-correct its contravention of the MFMA to prevent the National Treasury invoking section 216(2) of the Constitution together with MFMA sections 38 and 171. **The municipality (by implication the accounting officer and ultimately the municipal council) is urged to ensure that all steps required in terms of our MFMA Budget Circular no. 112 (06 December 2021) and 30 September 2022 letter are taken to urgently rectify this situation.**



**The corrective action required from the municipality, as a minimum, must include the following –**

- At this point in time, council must have adopted a Budget Funding Plan and the municipality's progress on implementing such must be reported monthly to council and the provincial treasury.
  - The municipality must already have submitted its approved Budget Funding Plan together with the council resolution approving such to the National Treasury and provincial treasury, as well as the related progress reports.
- The municipality has a legislative responsibility to pay all suppliers for service rendered within 30 days of receipt of the invoice (MFMA section 65 (2)(e)) – the municipality's adopted Budget Funding Plan and monthly progress reports (including the MFMA section 41 and 71 reports) must reflect the municipality's prioritization of payment to bulk suppliers:
  - Credible measures to maintain the current bulk account(s) and settle arrear payments must be included in the adopted Budget Funding Plan and progress on implementing these must explicitly be reported on monthly to council, your provincial treasury and also to the National Treasury as part of the MFMA sections 41 and 71 reporting.
- The municipality must fully align its expenditure to realistic collection levels – you are encouraged to work closely with the provincial treasury to agree on steps to rectify this situation and your main adjustments budget in February 2023 must clearly reflect a reduction of expenditure that fully aligns to your realistic collection levels during 2022/23 and the collection levels reflected in the audited past three years' financial statements.
- The February 2022/23 main adjustments budget as well as the 2023/24 tabled and adopted MTREF must provide for and prioritise payments to bulk suppliers, including honoring repayment agreements and must show a gradual improvement of cash surpluses to settle arrear payments that the municipality failed to honor in the past; and
- The municipality must comply with all the criteria for the release of the Local Government Equitable Share (LGES) set-out in paragraph 8 (Transfers to Municipalities) of MFMA Budget Circular No. 112 issued and communicated to all municipalities on 06 December 2021:
  - Evidence supporting the municipality's compliance to the MFMA Budget Circular No. 112, LGES release criteria must have been submitted to the National Treasury and provincial treasury and within the relevant respective timeframes.

The National Treasury again confirms that your municipality has transgressed by adopting a budget that is not funded or aligned to MFMA section 18 and not complying with the MFMA or the conditions associated or that your municipality is not fully / partly complying with the LGES release criteria communicated to you in the MFMA Budget Circular no. 112 on 06 December 2021. The adoption of an unfunded budget is contrary to the resolutions taken by both the Budget Council and Budget Forum. Furthermore, an unfunded budget is indicative that the municipality will experience cash flow challenges during the year contributing to a transgression of the legal prescripts for payments to creditors within 30 days as per MFMA section 65 (2)(e). The municipality by not paying its bulk suppliers is placing the financial viability of large state-owned enterprises at risk.



**In terms of the law, this letter is a second and final warning to the municipality, providing the municipality with additional and last opportunity to self-correct.** The municipality (by implication the accounting officer and ultimately the municipal council) is urgently requested to ensure that all steps are taken to rectify this situation. This may require the municipality to immediately make unpleasant and unpopular decisions regarding operating revenues and expenditure projections, which we fully understand presents several dynamic challenges for the municipality in achieving a funded status in a context of compromised collection levels.

In terms of MFMA Section 5(2) the National Treasury is mandated to take appropriate steps if a municipality commits a breach of the MFMA, including the stopping of funds to a municipality in terms of section 216(2) of the Constitution if the municipality commits a serious or persistent material breach of any measures referred herein and take any other appropriate steps necessary to perform its functions effectively.

Furthermore, failure to resolve these transgressions can be construed as an act of financial misconduct in terms of section 171 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. Should these transgressions lead to a possible financial problem, you are reminded that MFMA section 54(1)(e) obliges the mayor to "identify any financial problems facing the municipality, including any emerging or impending financial problems", and MFMA section 55(a) then requires that the mayor "MUST immediately report the matter to the MEC for local government in the Province".

If all these requirements have been met and the municipality provided supporting documentation to this effect, the National Treasury will release the municipality's December 2022 Equitable Share allocation. The evidence that the municipality met all the above conditions must be submitted to the National Treasury: Local Government Budget Analysis for the attention of Mr. Jan Hattingh before Wednesday, 30 November 2022, close of business.

The municipality is therefore encouraged to address these matters urgently.

Yours faithfully

**MALIJENG NGQALENI**

**DEPUTY DIRECTOR GENERAL: INTERGOVERNMENTAL RELATIONS**

**DATE: 28 NOVEMBER 2022**

CC: The Mayor  
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