
PROVINCE OF WESTERN CAPE

**WESTERN CAPE
EXCHEQUER LAW**

PROVINSIE WES-KAAP

**WES-KAAPSE
SKATKISWET**

No 4, 1994

LAW

To provide for the regulation in the province of Western Cape of the collection, receipt, control, custody and issue of State moneys and the receipt, custody and control of other State property; the duties and powers of the Provincial Treasury; the granting of guarantees, indemnities and securities; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Legislature of the province of Western Cape, as follows:—

Definitions

1. (1) In this Law and any Provincial Financial Regulation and Provincial Treasury Instruction issued in terms thereof, unless the context otherwise indicates— 5
- (i) “accounting officer” means a person referred to in sections 16 and 17; (xxv)
 - (ii) “adjustments estimate” means an estimate of expenditure from the Provincial Revenue Fund submitted to the Provincial Legislature in respect of expenditure on the services of the Province, which is confined to— 10
 - (a) the shifting of funds between and within votes;
 - (b) the reappropriation of money which was appropriated by the Provincial Legislature in the preceding financial year, but was not spent; 15
 - (c) the appropriation of money for the services of the Province in respect of which no or insufficient moneys have been appropriated in the relevant financial year and which may only be appropriated— 20
 - (i) from money obtained from the sale of assets of the Province;
 - (ii) as a result of an authorisation issued under sections 7 and 8;
 - (iii) in respect of expenditure already announced by the responsible Member in his speech during the tabling of an appropriation Law in the Provincial Legislature;
 - (iv) in respect of expenditure regarded as being unforeseen and unavoidable by the Provincial Treasury, or 25
 - (v) from increased provincial revenue and surpluses;
 - (d) any other change or adjustment to an appropriation Law which applies in the relevant financial year and which the Provincial Treasury deems necessary, and 30
 - (e) additional conditional and unconditional allocations by Parliament; 30
 - (i)
 - (iii) “appropriation account” means an account mentioned in section 15; (ii)
 - (iv) “appropriation Law” means a Law by which an estimate of expenditure or adjustments estimate is appropriated as a charge against the Provincial Revenue Account approved by the Provincial Legislature; 35
 - (vi)
 - (v) “Auditor-General” means the person appointed as such in terms of section 191(2) of the Constitution; (xiii)
 - (vi) “Bank” means a bank as defined in the Banks Act, 1990 (Act 94 of 1990); (iii) 40

- (vii) “credit” means an allocation of an amount of money in the Provincial Paymaster-General’s Account to an accounting officer; (xii)
- (viii) “estimate of expenditure” means an estimate of expected expenditure from the Provincial Revenue Fund on the services of the Province during a financial year which is submitted to the Provincial Legislature and which contains particulars of the purposes for which moneys, appropriated in an appropriation Law, shall be utilised, and includes any estimate of supplementary expenditure on such services during that financial year which it is deemed necessary to provide for after the first-mentioned estimate has been submitted to the Provincial Legislature, but before it has been approved; (v) 5
- (ix) “Financial Regulations” means any regulations made in terms of a National Exchequer Act; (xi)
- (x) “financial year” means the period extending from 1 April in any year to 31 March in the next succeeding year; (vii) 15
- (xi) “head of provincial department” means an officer appointed head of that provincial department; (xvi)
- (xii) “Provincial debt” means money borrowed by the Province in terms of any law or a debt which is allocated to the Province in terms of section 239 of the Constitution and which is to be repaid from the Provincial Revenue Fund; (xxii) 20
- (xiii) “provincial department” means an organisational component of the Provincial Administration: Western Cape which represents a vote; (xv)
- (xiv) “Provincial Exchequer Account” means the account mentioned in section 3(1); (xxi) 25
- (xv) “Provincial Financial Regulation” means a regulation made by the responsible Member in terms of section 24; (xvii)
- (xvi) “Provincial Paymaster-General’s Account” means the account mentioned in section 9(1); (xiv)
- (xvii) “provincial revenue” means all moneys received, whether directly or as transfer payments from the National Revenue Fund in the form of taxes, imposts or duties and all casual and other receipts of the Province, whatever the source, which may be appropriated by the Provincial Legislature, and includes moneys borrowed in terms of the provisions of any law, but does not include the amount of any fine not exceeding R50 imposed upon any person by any court of law, in so far as such amount has not been paid, or revenue accruing to the National Revenue Fund or any other provincial revenue fund; (xviii) 30
- (xviii) “Provincial Revenue Account” means the account mentioned in section 2; (xx) 40
- (xix) “Provincial Revenue Fund” means the fund established by section 159 of the Constitution; (xix)
- (xx) “Provincial Treasury” means the provincial financial authority in the Province which is vested in the provincial department responsible for financial matters and whose powers with regard to any matter are exercised by the responsible Member or an officer in that provincial department who, by virtue of a division of work in that provincial department, deals with that matter; (xxiii) 45
- (xxi) “Provincial Treasury Instruction” means an instruction issued by the Provincial Treasury in terms of section 25; (xxiv) 50
- (xxii) “standard interest rate” means the rate of interest determined in terms of a National Exchequer Act; (xxviii)
- (xxiii) “State moneys” means—
 (a) all provincial revenue, and
 (b) all other moneys whatever received or held by an accounting officer for, or on account of, the Province; (xxvi) 55
- (xxiv) “State property” means any property of the Province, the disposal of which is not governed by any other law; (xxvii)
- (xxv) “statutory body” means any local government, board, fund, institution, company, corporation or other organisation established or constituted by or under any law in terms of which funding is done from the Provincial Revenue Account or of which the accounts are to be audited by the Auditor-General; (xxix) 60

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appropriation Law or other law for the requirements of the Province; provided that until such time as provision has been made in an appropriation Law for such requirements during a financial year, such moneys shall be deemed to have been appropriated by law for such requirements, subject to the following limitations:

- (a) in respect of the first four months of the relevant financial year, to not more than 45 percent of;
 - (b) in respect of each of the following months, to not more than 10 percent of, and
 - (c) in total, to not more than,
- the amount voted by the Provincial Legislature by an appropriation Law for the immediately preceding financial year.

(2) Issues by virtue of the proviso to subsection (1) shall be deemed to be issues by virtue of the appropriation Law for the financial year in question, and as a charge against the Provincial Revenue Account.

(3) Moneys deemed to have been appropriated as contemplated in the proviso to subsection (1) shall only be utilised for services in respect of which expenditure was authorised by an appropriation Law during the immediately preceding financial year, or in respect of which some other authorisation by another law exists.

- (4) When applying this section in a case where—
 - (a) the Provincial Legislature could not adopt an appropriation Law as the functions concerned had not yet been assigned to it, or
 - (b) certain functions were imposed on the Province after an appropriation Law had been passed for the preceding financial year,
 in the case contemplated in paragraph (a) the total amount on which the relevant percentages are based shall be determined by the responsible Member, and in the case contemplated in paragraph (b) the total amount of the appropriation Law of the preceding financial year shall be increased by the costs of those functions for a full year, and such functions shall, for the purposes of subsection (3), be deemed to be part of the relevant appropriation Law.

- (5) The responsible Member—
 - (a) shall, for every financial year, in a form determined by the Minister responsible for national financial matters, submit to the Provincial Legislature an estimate of revenue and an estimate of expenditure to be defrayed from the Provincial Revenue Account, and
 - (b) may submit to the Provincial Legislature an adjustments estimate to be so defrayed.

Duration of appropriation Law, and expenditure in financial year

5. (1) An appropriation Law shall not be construed as authorising the utilisation of moneys appropriated thereby in a financial year other than the financial year to which it expressly relates.

(2) Subject to the provisions of subsection (3) and sections 6, 7 and 8, expenditure shall in each financial year be incurred in accordance with standing statutory appropriations and, in respect of each vote, in accordance with the main divisions thereof, the particulars of which shall be contained in the estimate of expenditure and the adjustments estimate.

(3) Expenditure on a service in respect of which no or insufficient provision has been made in an appropriation Law shall not be brought to account as a final debit against a vote, unless—

- (a) in the case of insufficient provision, a saving under another main division of the vote concerned is applied towards such expenditure with the approval of the accounting officer, unless the Provincial Treasury directs otherwise, or
- (b) the responsible Member granted a written authority therefor beforehand in terms of section 7.

Column 2-items

6. (1) The amounts appearing in “Column 2” of a schedule to an appropriation Law in respect of any vote shall, subject to the provisions of section 7(1)(b)(ii), not

be exceeded, and savings thereon may, with the approval of the responsible Member, be applied towards the defrayment of any other expenditure for which insufficient appropriation has been made under that vote.

(2) An amount appearing in "Column 2" of a schedule to an appropriation Law in respect of any vote may be increased with such portion of the moneys appropriated for the Vote: Improvement of conditions of service of the Province as the accounting officer in consultation with the Provincial Treasury may determine. 5

Authorisation by responsible Member for utilisation of moneys in certain circumstances 10

7. (1) Notwithstanding the provisions of sections 4 and 6, the responsible Member may grant authority for moneys in the Provincial Revenue Fund to be utilised during a financial year—

(a) to defray expenditure of an exceptional nature which has not been provided for in an appropriation Law and which cannot without serious prejudice to the public interest be postponed until appropriation therefor can be made by the Provincial Legislature, or 15

(b) to defray—

(i) expenditure in connection with an expected excess on a vote which cannot without serious prejudice to the public interest be postponed until appropriation therefor can be made by the Provincial Legislature, and 20

(ii) expenditure in connection with an expected excess of amounts which appear in "Column 2" of a schedule to an appropriation Law;

provided that the total amount in respect of which authority may be granted in terms of this section shall not at any time exceed an amount equal to two percent of the total amount appropriated by the then current appropriation Law or which is available by virtue of the proviso to section 4(1); provided further that such authority shall comply with the criteria stated in the definition of "adjustments estimate" in section 1(1). 25 30

(2) Steps shall be taken not later than during the next ensuing session of the Provincial Legislature for the appropriation of any amounts which have been or will be utilised in terms of subsection (1).

Power of Provincial Treasury to limit or suspend incurring of expenditure

8. (1) Notwithstanding anything to the contrary contained in any law, including any law whereby money is appropriated for any statutory body, fund or account, an amount in an appropriation Law, or the amount stated in an authority granted in terms of section 7, shall be construed as merely indicating the maximum amount which may be utilised for the service or purpose concerned, and the Provincial Treasury may withhold or suspend the disbursement of moneys which have been appropriated or in respect of which authority has been granted in terms of section 7(1), if in the opinion of the Provincial Treasury circumstances make such withholding or suspension desirable. 35 40

(2) The Provincial Treasury shall keep a record of every withholding or suspension in terms of subsection (1) and shall without delay notify the accounting officer and the Auditor-General of every such withholding or suspension. 45

(3) Any amount of which payment was withheld or suspended in terms of subsection (1) may be utilised during the financial year concerned for a purpose approved by the Provincial Treasury.

(4) The Provincial Treasury shall keep a record, and without delay notify the Auditor-General, of every approval granted in terms of subsection (3). 50

Account of Provincial Paymaster-General

9. (1) In addition to the Provincial Exchequer Account, the Provincial Treasury

shall maintain at the same Bank contemplated in section 3(1) an account entitled “the Provincial Paymaster-General’s Account” and may cause so much of any moneys—

- (a) appropriated by law;
- (b) which may, by virtue of the provisions of section 7, be utilised for any purpose, or
- (c) deemed to be appropriated by law,

and as has been requisitioned in terms of subsection (2) to be transferred from the Provincial Exchequer Account to the Provincial Paymaster-General’s Account.

(2) (a) The Provincial Treasury shall grant to an accounting officer, on a requisition by him or her, and out of the moneys in the Provincial Paymaster-General’s Account, credits out of which disbursements for the services for which he or she is responsible shall be made by him or her.

(b) The Provincial Treasury may limit the granting of credits referred to in paragraph (a) to the amounts which, in its opinion, are required for current payments in respect of the service or purpose for which it may be utilised.

(3) The Provincial Treasury shall not grant a credit in respect of an amount of which payment was withheld or suspended in terms of section 8(1), unless approval has been granted in terms of section 8(3).

(4) An accounting officer shall keep account of all credits granted to him or her in terms of subsection (2), and of all disbursements therefrom.

(5) An accounting officer shall, in addition to State moneys, deposit other moneys for which he or she is accountable in the Provincial Paymaster-General’s Account and may make disbursements from that account.

(6) In regard to the Provincial Paymaster-General’s Account the Provincial Treasury shall maintain for each accounting officer an account of all credits, deposits, disbursements and withdrawals.

(7) An accounting officer shall as soon as is practicable after his or her accounts for any financial year have been closed, surrender to the Provincial Treasury, for redepositing in the Provincial Exchequer Account, any unexpended moneys in respect of which he or she received credits in terms of subsections (2) and (8), and the Provincial Treasury shall credit therewith the account in the Provincial Revenue Fund which was charged with the anticipated expenditure concerned.

(8) If it appears after 31 March of any financial year that the expenditure by an accounting officer on services in that financial year may possibly exceed the amount of the credits granted to him or her by the Provincial Treasury in terms of subsection (2), he or she shall as soon as possible, provided appropriated funds for that financial year are still available under the vote concerned, requisition the Provincial Treasury for a credit to cover such expected excess, and the Provincial Treasury may, in the manner prescribed in subsections (1) and (2), grant the necessary credit and cause the moneys in question to be transferred in the following financial year.

(9) An accounting officer shall limit the amount of his or her requisitions on the Provincial Treasury for credits to the amounts which in his or her opinion are essential to meet his or her current monthly disbursements, and the Provincial Treasury shall, subject to the provisions of section 8(1), grant credits to the extent of such amounts and to such extent only.

(10) Notwithstanding anything to the contrary contained in this section, the Provincial Treasury may, on a requisition by the Secretary to the Provincial Legislature, pay to the said Secretary the moneys appropriated for the services of the Provincial Legislature, or which, by virtue of the provisions of section 7, may be utilised therefor, or are deemed to be appropriated therefor by law, and the Provincial Treasury shall for that purpose grant the said Secretary credits.

(11) The Provincial Treasury may temporarily utilise moneys in the Provincial Paymaster-General’s Account which in its opinion are available therefor—

- (a) to grant advances to an accounting officer on such conditions as it may determine;
- (b) to make transfers to the Provincial Exchequer Account for the purpose of financing anticipated deficits in that account, and moneys so transferred shall be deemed to be moneys borrowed in accordance with the provisions of a National Exchequer Act, and
- (c) for temporary investment on such conditions as it may determine.

Power of Provincial Treasury to utilise moneys in Provincial Exchequer Account for certain purposes

- 10.** (1) The Provincial Treasury may utilise available moneys in the Provincial Exchequer Account—
- (a) for temporary investment in the area of the national territory of the Republic of South Africa referred to in section 1 of the Constitution on such conditions as it may determine; 5
 - (b) for the payment of legitimate claims arising from a guarantee, an indemnity or a security furnished by or assigned to the Province, and
 - (c) for the refund of money inadvertently or incorrectly paid into the Provincial Exchequer Account. 10
- (2) The moneys utilised under subsection (1) for specific purposes shall be deemed to have been appropriated for such purposes.
- (3) The member of the Executive Council responsible for the provincial department concerned in a matter referred to in section 22 shall as soon as practicable lay upon the Table in the Provincial Legislature a statement reflecting the utilisation of moneys in terms of subsection (1)(b). 15

Authority for opening bank accounts

- 11.** (1) An account in respect of provincial revenue may only be opened on the written authority of the Provincial Treasury at a Bank, and where an account has been so opened, the relevant Bank shall not allow the account to be overdrawn subject to section 157(2) of the Constitution. 20
- (2) The Provincial Treasury shall in consultation with the South African Reserve Bank annually revise the allocation of banking accounts to a Bank in respect of the Provincial Exchequer Account and the Provincial Paymaster-General's Account. 25

Establishment of trading and related accounts

- 12.** (1) The Provincial Treasury may authorise an accounting officer to establish trading and related accounts in respect of services and goods supplied by his or her department to his or her own department, any other department in the Province or any other institution. 30
- (2) Expenditure in respect of the supply of services and goods referred to in subsection (1), as determined by the Provincial Treasury, shall be financed from moneys in the accounts—
- (a) which have been appropriated by the Provincial Legislature; 35
 - (b) which, notwithstanding anything to the contrary in this Law or any other law contained, have been received in payment of the services and goods referred to in subsection (1);
 - (c) which have been obtained from the sale of redundant and unserviceable supplies related to the supply of the services and goods in question, or 40
 - (d) which have been obtained with the concurrence of the Provincial Treasury from any other source.
- (3) At the end of a financial year any profit or loss on any trading or related account shall either be credited to the Provincial Revenue Account or made good from appropriated moneys, as the case may be. 45

Systems of bookkeeping and accounting

- 13.** The Provincial Treasury may, after consultation with the Auditor-General—
- (a) prescribe particular systems of bookkeeping and accounting not prescribed by the Treasury in terms of a National Exchequer Act, which accounting officers shall follow, and 50
 - (b) give guidance, in such manner as it deems necessary, to an accounting officer in connection with the systems of bookkeeping and accounting prescribed by the Treasury and Provincial Treasury.

Accounting for Provincial Exchequer Account, and preparation of statements

14. (1) The Provincial Treasury shall account for the Provincial Exchequer Account and shall keep such accounts and records as are necessary to exercise proper control over the Provincial Revenue Fund.

(2) The Provincial Treasury shall as soon as practicable after the end of each month cause statements to be published in the *Provincial Gazette* showing the receipts into and transfers from the Provincial Exchequer Account during the period from the first day of the relevant financial year to the end of that month and the balances in the Provincial Exchequer Account at the beginning and at the end of such period.

(3) As soon as practicable after the accounts in respect of any financial year have been closed, but in any case within five months after the close of a financial year, the Provincial Treasury shall prepare statements, as prescribed by the Treasury, of—

- (a) the Provincial Exchequer Account;
- (b) the Provincial Revenue Account;
- (c) the Provincial Paymaster-General's Account;
- (d) the Provincial debt and the amount of debt created and redeemed during the financial year;
- (e) the interest and dividends received in the accounts of the Provincial Revenue Fund and the interest paid on the Provincial debt, and
- (f) all other moneys controlled by the Provincial Treasury.

(4) The Provincial Treasury shall within the period referred to in subsection (3) also prepare statements, in support of the Provincial Revenue Account in respect of the financial year in question, of the receipts under the various headings shown in the estimate of revenue and of the transfers from the Provincial Exchequer Account of each of the votes shown in any appropriation Law for that year.

(5) The Provincial Treasury shall transmit the statements referred to in subsections (3) and (4) to the Auditor-General for examination as soon as they have been prepared.

Appropriation accounts

15. (1) An accounting officer shall as soon as possible, but not later than four months after the close of a financial year, prepare and transmit to the Auditor-General for examination an appropriation account in respect of such year and in respect of each vote under his or her control and shall at the same time send a copy thereof to the Provincial Treasury; provided that the Auditor-General may, in any case where in his or her opinion it is justifiable, grant extension for the submission of the required account for such period as in his or her opinion is necessary for the completion thereof.

(2) In an appropriation account an accounting officer shall in respect of each main division of a vote specify—

- (a) on the receipts side thereof the amount appearing for the financial year in question—
 - (i) in the estimates of expenditure and adjustments estimate, and
 - (ii) authorisations granted in terms of section 7 which have not been appropriated in terms of subsection (2) of that section; provided that a clear distinction is made between the receipts referred to in subparagraph (i) and this subparagraph, and
- (b) on the expenditure side thereof the amount actually expended during the same period; provided that the amount of any advance by an accounting officer to defray expected expenditure which is not supported by acceptable expenditure vouchers shall not be included on the expenditure side.

(3) Each appropriation account rendered to the Auditor-General shall be accompanied by—

- (a) explanations of the causes of variation, in excess of two percent, between expenditure and the amount contemplated in subsection (2)(a);
- (b) an indication of the amount of any surplus to be surrendered or of any deficit;
- (c) a statement to the effect that the preceding financial year's surplus, if any, has been surrendered, and

(d) an indication of the aggregate of any balance in a suspense account which may be chargeable to the vote.

(4) Appropriation accounts and particulars furnished in terms of this section shall be signed by the accounting officer.

(5) (a) Whenever a person is charged under section 17(1) with the responsibility of accounting for State moneys and State property in respect of any particular portion of a vote, the particulars relating to that portion shall be dealt with separately in the appropriation account in respect of the vote in question. 5

(b) A person referred to in paragraph (a) shall furnish the accounting officer concerned with sufficient particulars so as to enable him or her to comply with the provisions of subsections (1), (2) and (3). 10

Accounting officer

16. (1) There shall be an accounting officer for each vote who shall be charged with the responsibility of accounting for all State moneys received and all payments made by him or her and the acquisition, receipt, custody and disposal of all State property. 15

(2) An accounting officer shall exercise the powers conferred upon him or her and perform the duties assigned to him or her by law, by Financial Regulation, by Treasury Instructions, by Provincial Financial Regulations, by Provincial Treasury Instructions or by the Provincial Treasury. 20

(3) Unless otherwise directed by the Provincial Treasury, the accounting officer for—

(a) the vote or votes of a provincial department shall be the head of the provincial department concerned, and

(b) a statutory body for which no accounting officer has been designated under the provisions of any other law shall be the chief executive officer of such statutory body. 25

(4) During the absence of an accounting officer his or her powers shall be exercised and his or her duties performed by the officer acting in his or her place.

Responsibility of accounting for State moneys and State property by person not being accounting officer 30

17. (1) The Provincial Treasury may notwithstanding the provisions of section 16, charge a person who is not an accounting officer with the responsibility of accounting for—

(a) State moneys received and paid out by that person, and 35

(b) State property acquired, received, kept or disposed of by that person in connection with a trading and related account established under section 12(1), or a particular portion of a vote, accounts of which are kept separately.

(2) Whenever a person is charged under subsection (1) with the responsibility of accounting for State moneys and State property in respect of a trading and related account or any particular portion of a vote, the Provincial Treasury may assign to such person any or all of the powers and duties referred to in section 16(2) which an accounting officer may exercise or is required to perform in respect of such trading and related account or portion of a vote. 40 45

(3) A power or duty assigned to a person under subsection (2) shall be exercised or performed by such person in respect of the said trading and related account or portion of a vote to the exclusion of the accounting officer responsible for the vote of which that trading and related account or portion forms part.

(4) Whenever a person referred to in subsection (1) is absent, his or her powers shall be exercised and his or her duties performed by the person acting in his or her place. 50

CHAPTER II

*General Financial Control***Other powers of Provincial Treasury**

18. (1) Subject to the provisions of this Law and any other law, the Provincial Treasury shall have the power to— 5
- (a) give guidance in, and exercise control over, State moneys and other State property to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof;
 - (b) direct that such expenditure charged against the Provincial Revenue Account as it may determine shall not be incurred without its approval having been obtained; 10
 - (c) approve fees or other charges or the rates, scales or tariffs of fees or other charges not fixed or capable of being fixed by or in terms of any law and relating to revenue accruing to or expenditure from the Provincial Revenue Fund, and to direct that no such fee or charge or rate, scale or tariff thereof shall be introduced before the approval of the Provincial Treasury has been obtained; 15
 - (d) grant approval for the rendering of a free service;
 - (e) grant approval for the write-off of a loss of State money and other State property; 20
 - (f) grant approval for the variation or cancellation of contracts to the detriment of the Province;
 - (g) require accounting officers to submit particular inputs in respect of budget matters to it, and
 - (i) to analyse and make recommendations on such inputs to the responsible Member, or 25
 - (ii) to make such inputs or processed information thereof available to the Treasury at its request;
 - (h) require any accounting officer to submit to it information, returns, documents, explanations and statements of reasons in regard to any matter affecting State moneys or other State property; 30
 - (i) grant approval for the settlement of a claim by or against the Province or for the waiver of a claim by the Province;
 - (j) authorise or condone non-compliance by an accounting officer with an instruction or other written request, stipulation or condition of the Provincial Treasury in connection with any matter; 35
 - (k) investigate and inspect systems for the control over and administration of State moneys and other State property and prescribe additional systems, other than those referred to in section 13;
 - (l) determine against which vote or sub-division thereof expenditure on a service should be charged; 40
 - (m) determine the terms and conditions on which revenue due to the Province may be paid and on which State moneys may be disbursed;
 - (n) approve remissions, as an act of grace, of moneys due to the Province;
 - (o) approve refunds of revenue to the Province as an act of grace; 45
 - (p) approve payments, as an act of grace, from State money;
 - (q) approve gifts of State moneys and other movable State property or the acceptance of gifts to the Province;
 - (r) approve the alienation, letting or other disposal of movable State property; 50
 - (s) afford guidance in the handling of and exercise control over all trust money and trust property temporarily deposited or left in the care of an accounting officer or other person in the service of the Province;
 - (t) give guidance in the application of norms and standards prescribed in respect of improvements to immovable property financed in full or in part from the Provincial Revenue Fund, and 55

(u) approve acceptance of sponsorships to the Province; provided that when the amount involved in any case contemplated in paragraph (n), (o), (p) or (q), other than any such case in connection with movable State property, exceeds R100 000 or relates to a tax, other duty or impost imposed by law, such remission, refund, payment or gift shall not be made unless moneys for the purpose have been appropriated by the Provincial Legislature; provided further that if, in the opinion of the Provincial Treasury, the circumstances connected with the payment of any such tax, other duty or impost justify a refund as an act of grace of the whole or a portion of the amount in question, the Provincial Treasury may approve such refund to an amount not exceeding R100 000 as a charge against the vote concerned.

(2) The Provincial Treasury may in its discretion approve the write-off of the whole or any portion of an amount owing to the Province, if it is satisfied that—

- (a) the amount is irrecoverable;
- (b) recovery of the amount would be uneconomical;
- (c) recovery of the amount would cause undue hardship to the debtor or his or her dependants because they would be deprived of the minimum essential means of livelihood;
- (d) the assets of the debtor or of the estate of the debtor, if he or she is deceased, (whether or not such assets are pledged to the Province) are indispensable to his or her dependants or are of relatively little value, and the debtor or his or her estate, as the case may be, is unable to pay the amount or any portion thereof, except by the disposal of such assets and such disposal would cause undue hardship, or
- (e) it would be to the advantage of the Province to effect a settlement of its claim in question or to waive such claim.

(3) Whenever a power is conferred by any law to determine any rate, scale, tariff, fee or charge for the purposes of any revenue accruing to, or expenditure from, the Provincial Revenue Fund, such a determination shall, notwithstanding the provisions of such law, not be made before the approval of the Provincial Treasury thereof has been obtained; provided that the provisions of this subsection shall not apply to any tax or such a determination by the Premier.

(4) Where a voucher or other proof of receipt or payment is in any way defective or has been lost or destroyed and—

- (a) the Provincial Treasury in the case of accounts of accounting officers and other persons in the service of the Province, or
- (b) subject to the provisions of any other law, the executive authority of a statutory body, in the case of such accounts of such statutory body,

is satisfied with the explanation of the responsible person, the Provincial Treasury, or the executive authority of a statutory body, as the case may be, may make an order dispensing with the production of a voucher or such other proof or may make such other order as may appear just in the circumstances.

Delegation of powers of Provincial Treasury

19. (1) The Provincial Treasury may on such conditions as it may determine, delegate to an accounting officer any power conferred upon it by section 18(1) and (2) or section 21(5).

(2) Where the Provincial Treasury has delegated any power under subsection (1), it may authorise the accounting officer concerned to further delegate that power to the holder of any post designated by the Provincial Treasury.

(3) An accounting officer shall not be divested of any power delegated by him or her and may amend or withdraw any decision made in exercising that power.

(4) The Provincial Treasury shall not be divested of any power delegated by it or under its authority and may amend or withdraw any decision made in exercising

such power, including a decision of an accounting officer whereby a decision contemplated in subsection (3) is amended or withdrawn.

(5) Where any power has been delegated to the holder of a post, that power may be exercised by the person who for the time being performs the functions attached to such post.

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Unauthorised expenditure

20. (1) An expenditure concerned shall be unauthorised if—

- (a) a payment is made by an accounting officer without provision having been made therefor by or by virtue of the provisions of any law;
- (b) a payment or part of a payment on a service authorised by an appropriation Law results in— 10
 - (i) the total amount appropriated for the vote concerned, regard being had to any adjustment referred to in section 6(2) and section 8(1) and (3), being exceeded;
 - (ii) a prohibition, by virtue of the provisions of section 5(3), on the expenditure being brought to account as a final debit, or 15
 - (iii) the amount shown in “Column 2” of the schedule to an appropriation Law in respect of a service being exceeded and an authority referred to in section 7(1)(b)(ii) not having been obtained, or an increase referred to in section 6(2) has not been made therefor; 20
- (c) an accounting officer is unable to produce to the Auditor-General in respect of a payment an appropriate Provincial Treasury authority required in terms of the provisions of this Law or any other law, or
- (d) an accounting officer makes a payment inconsistent with a provision of any law. 25

(2) Unauthorised expenditure contemplated in subsection (1) shall not form a charge against the Provincial Revenue Fund until—

- (a) in the case of paragraph (a), (b) or (c) of that subsection, the expenditure concerned has been authorised by a law of the Provincial Legislature, or
- (b) in the case of paragraph (d) of that subsection, the expenditure concerned has been validated by a law of the Provincial Legislature. 30

(3) Unauthorised expenditure or any part thereof determined by the Provincial Legislature which has not been authorised or validated as contemplated in subsection (2), shall, if the accounting officer cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorised expenditure, be recovered by the Provincial Treasury from the accounting officer. 35

(4) The provisions of paragraphs (a), (c) and (d) of subsection (1) shall *mutatis mutandis* apply in respect of a statutory body unless otherwise provided by law, and for the purposes of paragraph (c) a reference to a Provincial Treasury authority shall be construed as a reference also to an authority of a member of the Executive Council or an executive authority or any other applicable authority, as the case may be. 40

(5) Unauthorised expenditure referred to in subsection (4) or any part thereof determined by the Provincial Legislature shall not form a charge against a fund or account concerned until it has been authorised, validated or made available in accordance with the normal budgetary procedure applicable to the fund or account concerned; provided that any unauthorised expenditure which has not been authorised or validated shall be recovered from the accounting officer if he or she cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorised expenditure. 50

Recovery of losses and damages

21. (1) If a person who is or was in the employ of the Province and caused the Province a loss or damage because he or she—

- (a) failed to collect State moneys for the collection of which he or she is or was responsible; 55

- (b) is or was responsible for an irregular payment of State moneys or for a payment of such moneys not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of State moneys due to an omission to carry out his or her duties;
- (d) is or was responsible for a deficiency in, or for the destruction of, or damage to State moneys, stamps, face-value documents and forms having a potential value, securities, equipment, stores or any other State property, or
- (e) due to an omission to carry out his or her duties or in any other manner is or was responsible for a claim against the Province,

the accounting officer concerned or the holder of a post designated by the Provincial Treasury shall determine the amount of such loss or damage or the amount necessary to replace State property in which there is a deficiency or which was destroyed, as prescribed by Provincial Treasury Instruction and, subject to the provisions of subsection (5), order, by notice in writing, the said person to pay to him or her, within thirty days from the date of such notice, the amount so determined.

(2) If a person who is in the employ of the Province and who has, in terms of subsection (1), been ordered to pay an amount fails to pay such amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (6) and (7), be deducted from his or her monthly salary; provided that such deduction shall not in any month exceed one-fourth of his or her monthly salary, unless such a person agrees in writing that a larger amount may be deducted.

(3) If a person who was in the employ of the Province and has, in terms of subsection (1), been ordered to pay an amount fails to pay such amount within the period stipulated in the notice in question, the accounting officer concerned shall, subject to the provisions of subsections (4), (6) and (7), recover such amount from the person concerned by legal process.

(4) If a person who has been ordered to pay an amount in terms of subsection (1) makes, within the period stipulated in the notice in question, an offer to pay the amount in instalments, the accounting officer or the holder of a post designated by the Provincial Treasury may allow payment in such instalments as he or she may consider reasonable; provided that if the redemption of the amount in terms of the offer will not be effected within a period of twelve months calculated from the date on which the first instalment is payable, the approval of the Provincial Treasury shall be obtained for the payment thereof over a period in excess of the period mentioned, and the Provincial Treasury may determine the other terms and conditions subject to which the amount shall be paid.

(5) If for any reason whatsoever an accounting officer or the holder of a post designated by the Provincial Treasury is of the opinion that an amount determined in terms of subsection (1) should not be recovered or should be recovered in part only from the person responsible therefor, he or she may request the Provincial Treasury to exempt that person from payment of the whole or a portion of such amount, and the Provincial Treasury may in its discretion approve the whole or a portion of such amount not being recovered.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may, within a period of thirty days from the date of such order, in writing request the accounting officer concerned, stating the grounds for his or her request, that a request as contemplated in subsection (5) be addressed to the Provincial Treasury, and if the accounting officer concerned refuses to address such a request to the Provincial Treasury or if the Provincial Treasury refuses to approve, as contemplated in the said subsection, the whole or a portion of the amount in question not being recovered as requested, such person may within thirty days after he or she has been notified in writing of any such refusal, appeal against such refusal to the responsible Member, and the responsible Member may, after such further investigation as he or she may deem necessary, dismiss the appeal or order that the appellant be exempted either wholly or partly, according as he or she may consider fair and reasonable, from the payment of such amount.

(7) A person who has in terms of subsection (1) been ordered to pay an amount

may, instead of appealing to the responsible Member under subsection (6), apply within a period of thirty days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer concerned on the merits of the case that the order was rightly made or that that amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be. 5

(8) If an amount is reduced in terms of subsections (5), (6) or (7), the reduced amount shall *mutatis mutandis* be recovered in accordance with the provisions of subsections (1), (2), (3) and (4). 10

(9) If a person who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, it shall be deemed that a debt is created to the Province to which the uniform interest rate determined in terms of a National Exchequer Act shall apply. 15

Guarantees in respect of loans

22. (1) The responsible Member and any other member of the Executive Council of the Province with the concurrence of the responsible Member may from time to time and, subject to— 20

(a) the provisions of section 157(3) of the Constitution first having been complied with;

(b) the conditions contained in subsection (3), and

(c) any other conditions which he or she or they may determine, including the waiver of such legal exceptions as he or she or they may deem fit, 25

furnish a guarantee in respect of the financial obligations arising from a loan concluded or to be concluded by a local government or by a board or body established by or under any law, (hereinafter referred to as “corporate body”), which is situated within the Province.

(2) A guarantee which is to be furnished in terms of subsection (1) may only be considered by the responsible Member or any other member of the Executive Council of the Province in concurrence with the responsible Member if the application for such a guarantee is accompanied by a written recommendation for the furnishing thereof by the executive authority of the local government or corporate body to which the guarantee is to be furnished, as the case may be. 30 35

(3) A guarantee shall only be furnished in terms of the provisions of subsection (1) on condition that—

(a) the proceeds of the loan so guaranteed—

(i) shall be employed in the public interest within the area under its jurisdiction by the local government in respect of whose loan a guarantee is to be furnished or within the area of the Province or part thereof, by the corporate body; 40

(ii) shall not be employed for the financing of current expenditure;

(iii) shall, in the case of a guarantee granted in respect of a loan by a local government, be employed in accordance with the provisions of any law of the Province covering the borrowing of money by a local government, and 45

(iv) shall be accounted for separately by the local government or corporate body concerned, as the case may be;

(b) the responsible Member, on the basis of information supplied to him or her by the executive authority of the local government or corporate body concerned, as the case may be, has satisfied himself or herself as to the fact that— 50

(i) the funds which are required cannot be obtained by means other than a guaranteed loan; 55

(ii) no reasonable doubt exists that the local government or corporate

- body concerned will be able to comply with the conditions and obligations under which the loan will be granted;
- (iii) the provisions of the loan agreement concerned—
- (aa) comply with the generally accepted principles of loan agreements; 5
- (bb) will be legally and technically correct, and
- (cc) will fully enunciate the obligations of the Province and the manner in which expenditure which the Province may have to incur in terms of such guarantee, will be recovered;
- (iv) taking into account the fact that a guarantee for the loan is required, the cost of the loan is market related, and 10
- (v) the availability of the loan proceeds will not be prejudicial to financial discipline within the local government or corporate body concerned.
- (4) The payment by the Province of legitimate claims arising from a guarantee furnished in terms of the provisions of subsection (1)— 15
- (a) shall be deemed to have been appropriated for such purposes, and
- (b) shall be reported as soon as possible to the Provincial Legislature by the member of the Executive Council who furnished such guarantee, but not later than six months after such payment was made, and he or she shall simultaneously present to the said legislature a report containing the circumstances relating to such payment. 20
- (5)(a) The responsible Member shall as soon as possible, but in any case not later than six months after the closing of the financial year, cause a statement to be published in the *Provincial Gazette* indicating in respect of each guarantee furnished by the Province in terms of subsection (1) the name of the local government or corporate body concerned, the amount of the commitments which may ensue from each such guarantee and, if foreign currency is involved, the relative amount thereof, and the financial year in which the guarantee concerned will expire. 25
- (b) Notwithstanding the provisions of paragraph (a), the responsible Member shall, within seven days of the furnishing of a guarantee in terms of this section, lay upon the Table of the Provincial Legislature the same particulars of such a guarantee as contemplated by paragraph (a), if that legislature is in session, or if that legislature is not then in session, within seven days after the commencement of its next ensuing session. 30
- (6) Notwithstanding anything to the contrary in this Law or any other law, a guarantee by the Province in respect of the financial obligations arising from a loan shall be furnished only in terms of this section and subject to the provisions of section 157(3) of the Constitution. 35 40

Application of certain provisions concerning powers of the responsible Member, and delegation of his powers

23. (1) Whenever a law requires a member of the Executive Council of the Province to do anything in or after consultation with or with the concurrence of the responsible Member, such requirement shall, unless one of the members concerned has otherwise directed, be deemed to have been complied with if consultation has taken place between the heads of the provincial departments concerned or their representatives. 45

(2) Except in a case to which subsection (1) applies, the responsible Member may delegate to an officer in the provincial department in which the provisions of this Law or any other law is administered by him or her, any power or function conferred on or assigned to him or her by this Law or such other law, in relation to the revenue, expenditure or property of the Province or a statutory body, with the exception of a power to make regulations and a power or function contemplated in sections 4(3), 7, 21(6) and 24(3), but shall not thereby be divested of a power or function so delegated, and may amend or withdraw a decision of such an officer made in the exercise or performance of any power or function so delegated. 50 55

Provincial Financial Regulations

24. (1) The responsible Member may make Provincial Financial Regulations which shall not be inconsistent with any National Exchequer Act, this Law or the Financial Regulations and shall apply to the Province—
- (a) prescribing further duties and responsibilities of accounting officers; 5
 - (b) providing for the designation of posts to which principal receivers of revenue may be appointed and prescribing their duties and responsibilities as such;
 - (c) providing for the refund from current revenue of moneys collected in error; 10
 - (d) providing for the designation of officers or other persons as financial managers and of officers as departmental accountants and prescribing their duties and responsibilities as such;
 - (e) prescribing a system which shall be observed in regard to the collection, receipt, banking, custody, disbursement, disposal and control of, accounting for, and supervision over, State moneys and the accounts kept in connection therewith; 15
 - (f) prescribing the conditions under which approval for the acceptance and utilisation of gifts to the Province may be given;
 - (g) providing for the control over and stocktaking of securities, stamps and other State property; 20
 - (h) providing for the manner in which and procedures according to which accounting officers and the Provincial Treasury shall exercise the powers and perform the duties assigned to them by this Law;
 - (i) providing for the financial arrangements regarding a service rendered by one provincial department to another, or 25
 - (j) providing in general for the administration of the provisions and the achievement of the objects of this Law.
- (2) Different Provincial Financial Regulations may under subsection (1) be made in respect of different categories of State moneys or other State property, or different categories of persons entrusted with the collection, receipt, banking, custody, disbursement, disposal and control of, accounting for, and supervision over, State moneys and other State property. 30
- (3) The responsible Member may, if in his or her opinion circumstances warrant it, provide that a Provincial Financial Regulation made or deemed to have been made under subsection (1) need not be complied with to the extent determined by him or her. 35
- (4) Until such time as Provincial Financial Regulations have been made in terms of subsection (1), the Financial Regulations issued in terms of the Exchequer Act, 1975 (Act 66 of 1975), shall, to the extent that they are consistent with the power to make Provincial Financial Regulations contemplated in subsection (1), *mutatis mutandis* be deemed to be Provincial Financial Regulations made under subsection (1). 40

Provincial Treasury Instructions

25. (1) The Provincial Treasury may from time to time issue Provincial Treasury Instructions and other directives, which shall not be inconsistent with any National Exchequer Act, this Law, the Financial Regulations and any Provincial Financial Regulations, in regard to— 45
- (a) the manner in which accounting officers shall make submissions to the Provincial Treasury and the persons by whom such submissions shall be signed, and 50
 - (b) the administration in general of the provisions of this Law and the Provincial Financial Regulations and the achievement of the objects thereof.
- (2) The Provincial Treasury may, if in its opinion circumstances warrant it, approve a departure from a Provincial Treasury Instruction. 55

(3) Until such time as Provincial Treasury Instructions have been issued in terms of subsection (1), the Treasury Instructions issued in terms of the Exchequer Act, 1975 (Act 66 of 1975), shall, to the extent that they are consistent with the power to issue Provincial Treasury Instructions contemplated in subsection (1), *mutatis mutandis* be deemed to be Provincial Treasury Instructions issued in terms of subsection (1). 5

Provincial Revenue Instructions

26. An officer designated as principal receiver of revenue in terms of section 3(2)(a) of this Law may from time to time and shall, whenever required by the Provincial Treasury to do so, issue to all persons who are responsible for the collection, control and disposal of any provincial revenue in respect of which he or she is the principal receiver, or of such other revenues as the Provincial Treasury may determine, such instructions as the Provincial Treasury may approve, or require him to issue in regard to such collection, control and disposal. 10

CHAPTER III

15

Miscellaneous Provisions

Standard interest rate

27. The standard interest rate as determined by the Minister responsible for national financial matters shall be complied with by a provincial accounting officer. 20

Short title

28. This Law shall be called the Western Cape Exchequer Law, 1994, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.