

# CHAPTER 13

## FINANCE

### General Financial Matters

#### National Revenue Fund

213. (1) There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the National Revenue Fund only—
- (a) in terms of an appropriation by an Act of Parliament; or
  - (b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament.
- (3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

[Date of commencement of s. 213: 1 January 1998]

#### Equitable shares and allocations of revenue

214. (1) An Act of Parliament must 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.
- (2) The Act referred to in subsection (1) may be enacted only after the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered, and must take into account—
- (a) the national interest;
  - (b) any provision that must be made in respect of the national debt and other national obligations;

- (c) the needs and interests of the national government, determined by objective criteria;
- (d) the need to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of the provinces and municipalities;
- (f) developmental and other needs of provinces, local government and municipalities;
- (g) economic disparities within and among the provinces;
- (h) obligations of the provinces and municipalities in terms of national legislation;
- (i) the desirability of stable and predictable allocations of revenue shares; and
- (j) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

[Date of commencement of s. 214: 1 January 1998]

### **National, provincial and municipal budgets**

215. (1) National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector.
- (2) National legislation must prescribe—
- (a) the form of national, provincial and municipal budgets;
  - (b) when national and provincial budgets must be tabled; and
  - (c) that budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation.
- (3) Budgets in each sphere of government must contain—
- (a) estimates of revenue and expenditure, differentiating between capital and current expenditure;
  - (b) proposals for financing any anticipated deficit for the period to which they apply; and
  - (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.

[Date of commencement of s. 215: 1 January 1998.]

## Treasury control

216. (1) National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing—
- generally recognised accounting practice;
  - uniform expenditure classifications; and
  - uniform treasury norms and standards.
- (2) The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.

[Sub-s. (2) substituted by s. 5 (a) of the Constitution Seventh Amendment Act of 2001.]

- (3) A decision to stop the transfer of funds due to a province in terms of section 214(1) (b) may be taken only in the circumstances mentioned in subsection (2) and—
- may not stop the transfer of funds for more than 120 days; and
  - may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 76(1) and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the national treasury.

[Sub-s. (3) amended by s. 5 (b) of the Constitution Seventh Amendment Act of 2001.]

- (4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time, following the process established in terms of subsection (3).
- (5) Before Parliament may approve or renew a decision to stop the transfer of funds to a province—
- the Auditor-General must report to Parliament; and
  - the province must be given an opportunity to answer the allegations against it, and to state its case, before a committee.

## Procurement

217. (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

- (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for—
  - (a) categories of preference in the allocation of contracts; and
  - (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- (3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

[Sub-s. (3) substituted by s. 6 of the Constitution Seventh Amendment Act of 2001.]

### **Government guarantees**

218. (1) The national government, a provincial government or a municipality may guarantee a loan only if the guarantee complies with any conditions set out in national legislation.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.
  - (3) Each year, every government must publish a report on the guarantees it has granted.

[Date of commencement of S. 218: 1 January 1998.]

### **Remuneration of persons holding public office**

219. (1) An Act of Parliament must establish a framework for determining—
  - (a) the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders; and
  - (b) the upper limit of salaries, allowances or benefits of members of provincial legislatures, members of Executive Councils and members of Municipal Councils of the different categories.
- (2) National legislation must establish an independent commission to make recommendations concerning the salaries, allowances and benefits referred to in subsection (1).
  - (3) Parliament may pass the legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).

- (4) The national executive, a provincial executive, a municipality or any other relevant authority may implement the national legislation referred to in subsection (1) only after considering any recommendations of the commission established in terms of subsection (2).
- (5) National legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General, and members of any commission provided for in the Constitution, including the broadcasting authority referred to in section 192.

## **Financial and Fiscal Commission**

### **Establishment and functions**

220. (1) There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation.
- (2) The Commission is independent and subject only to the Constitution and the law, and must be impartial.
- (3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors, including those listed in section 214(2).

### **Appointment and tenure of members**

221. (1) The Commission consists of the following women and men appointed by the President, as head of the national executive:
- (a) A chairperson and a deputy chairperson;
  - (b) three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation;
  - (c) two persons selected, after consulting organised local government, from a list compiled in accordance with a process prescribed by national legislation; and
  - (d) two other persons.

[Sub-s (1) substituted by s. 2 of the Constitution Fifth Amendment Act of 1999] and substituted by s. 7(a) of the Constitution Seventh Amendment Act of 2001.]

- (1A) National legislation referred to in subsection (1) must provide for the participation of—
- (a) the Premiers in the compilation of a list envisaged in subsection (1) (b); and
  - (b) organised local government in the compilation of a list envisaged in subsection (1) (c).

[Sub-s. (1A) inserted by s. 7(b) of the Constitution Seventh Amendment Act of 2001.]

- (2) Members of the Commission must have appropriate expertise.
- (3) Members serve for a term established in terms of national legislation. The President may remove a member from office on the ground of misconduct, incapacity or incompetence.

## Reports

222. The Commission must report regularly both to Parliament and to the provincial legislatures.

## Central Bank

### Establishment

223. The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament.

### Primary object

224. (1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.
- (2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

## Powers and functions

225. The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act.

## Provincial and Local Financial Matters

### Provincial Revenue Funds

226. (1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from a Provincial Revenue Fund only—
- (a) in terms of an appropriation by a provincial Act; or
  - (b) as a direct charge against the Provincial Revenue Fund, when it is provided for in the Constitution or a provincial Act.
- (3) Revenue allocated through a province to local government in that province in terms of section 214(1), is a direct charge against that province's Revenue Fund.
- (4) National legislation may determine a framework within which—
- (a) a provincial Act may in terms of subsection (2)(b) authorise the withdrawal of money as a direct charge against a Provincial Revenue Fund; and
  - (b) revenue allocated through a province to local government in that province in terms of subsection (3) must be paid to municipalities in the province.

[Sub-s. (4) added by s. 8 of the Constitution Seventh Amendment Act of 2001.]

[Date of commencement of s. 226: 1 January 1998]

### National sources of provincial and local government funding

227. (1) Local government and each province—
- (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and
  - (b) may receive other allocations from national government revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by provinces or municipalities may not be deducted from their share of revenue raised nationally, or from other allocations made to them

out of national government revenue. Equally, there is no obligation on the national government to compensate provinces or municipalities that do not raise revenue commensurate with their fiscal capacity and tax base.

- (3) A province's equitable share of revenue raised nationally must be transferred to the province promptly and without deduction, except when the transfer has been stopped in terms of section 216.
- (4) A province must provide for itself any resources that it requires, in terms of a provision of its provincial constitution, that are additional to its requirements envisaged in the Constitution.

[Date of commencement of s. 227: 1 January 1998]

### Provincial taxes

228. (1) A provincial legislature may impose—
- (a) taxes, levies and duties other than income tax, value-added tax, general sales tax, rates on property or customs duties; and
  - (b) flat-rate surcharges on any tax, levy or duty that is imposed by national legislation, other than on corporate income tax, value-added tax, rates on property or customs duties.

[Para. (b) substituted by s. 9 of the Constitution Seventh Amendment Act of 2001.]

- (2) The power of a provincial legislature to impose taxes, levies, duties and surcharges—
- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour; and
  - (b) must be regulated in terms of an Act of Parliament, which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[Date of commencement of s. 228: 1 January 1998]

### Municipal fiscal powers and functions

229. (1) Subject to subsections (2), (3) and (4), a municipality may impose—
- (a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and



- (b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.
- (2) The power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties—
  - (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour; and
  - (b) may be regulated by national legislation.
- (3) When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation. The division may be made only after taking into account at least the following criteria:
  - (a) The need to comply with sound principles of taxation.
  - (b) The powers and functions performed by each municipality.
  - (c) The fiscal capacity of each municipality.
  - (d) The effectiveness and efficiency of raising taxes, levies and duties.
  - (e) Equity.
- (4) Nothing in this section precludes the sharing of revenue raised in terms of this section between municipalities that have fiscal power and functions in the same area.
- (5) National legislation envisaged in this section may be enacted only after organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered.

[Date of commencement of s. 229: 1 January 1998]

### Provincial loans

230. (1) A province may raise loans for capital or current expenditure in accordance with national legislation, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[S. 230 substituted by s. 10 of the Constitution Seventh Amendment Act of 2001.]

### Municipal loans

- 230A. (1) A Municipal Council may, in accordance with national legislation—
- (a) 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
  - (b) bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[S. 230A inserted by s. 17 of the Constitution Sixth Amendment Act of 2001.]