

Consequence and Accountability Framework for Local Government in South Africa

Good Governance Summit!

Date : 13th – 14th June 2019
Oubaai Hotel – George
Garden Route District Municipality

A reminder: SALGA 2013 National Anti-Corruption Summit Key Outcomes



Delegates to the National Anti-Corruption Summit of SALGA from member municipalities declared to continue serving the people of South Africa by:

- Dedicating themselves to eradicate the scourge of corruption and maladministration; and
- Deepening the quality of governance at local government level.

Delegates further recognised achievements of SALGA & its member municipalities since 2011 National Conference which include:

- Improved oversight and accountability mechanisms in municipalities, e.g. establishment of MPACs & institutional systems and internal controls = reduction for corruption & maladministration;
- Increase in prosecutions & convictions for fraud and corruption which led to recovery of municipal funds (state funds);
- Increased efforts towards professionalisation of local government, including the regulatory initiatives, current & forthcoming

Background



- Accountability and Consequence management remains to be at the core of governance and constitutional democracy in South Africa.
- One of the key resolutions of the **2015** SALGA National Members Assembly (NMA), was a request to develop a Consequences and Accountability framework for municipalities in South Africa.
- This framework is therefore born out of the **2015** NMA key interventions for municipalities in South Africa.
- As such, the **2018** NMA had a grand political debate under the theme “**The Journey Towards Accountability and Consequence Management at Local Government Level**”
- This robust debate was constituted of high level panellists namely: Cllr Parks Tau (SALGA); Minister Zweli Mkhize (CoGTA); Deputy Minister Mondli Gungubele (*National Treasury*); Premier Mchunu (*KZN province*); Inkosi Siphohlele Mahlangu (*Chair NHTL*) and Mr Themba Godi (*Chair SCOPA*).
- It is against this background that in SALGA Strategic Plan 2017-2022, the development of the C&A framework has been identified as a **flagship project** for Organised Local Government.

Key objectives for developing a CA Framework

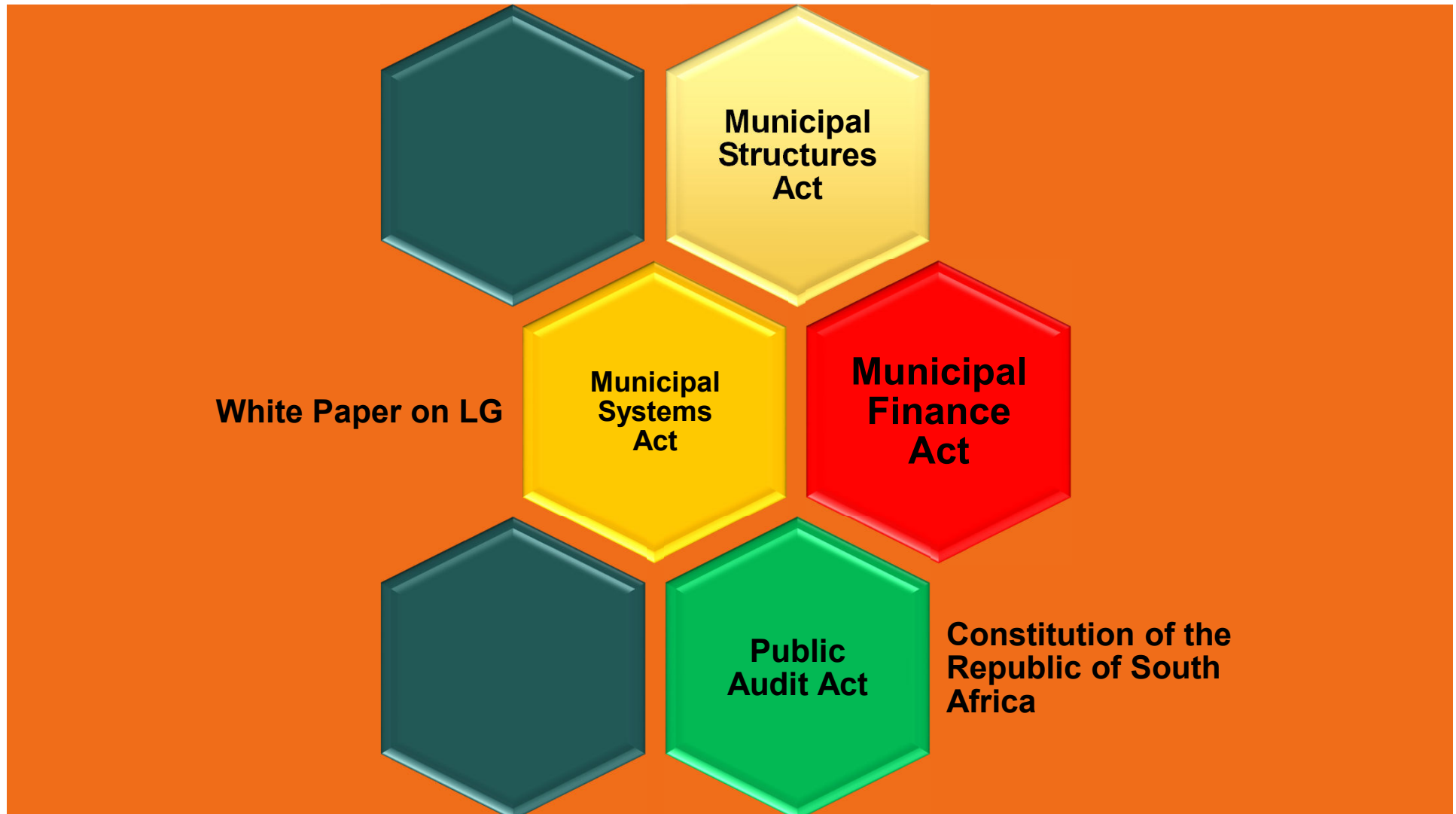
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- *To provide a concise guide on available options on which applicable consequences for which type or class of transgressions and non-performance apply.*
- *Also to reflect attendant implications for failure to act by leadership at both political and administrative levels.*

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- *To promote a culture of accountable, professional and ethical public administration that places emphasis on good governance and effective service delivery to local communities.*

Key Local Government Legal Architecture



Structure of framing CA Framework

Brief of the Act	Key Section of the Act	Consequences for non-compliance at LG level	Consequences for non-compliance at Provincial/ National level
		Key Responsible Person	Key Responsible Person

Local Government Municipal Structures Act 117 of 1998



- **Brief Narrative:** The Structures Act 117 of 1998 (hereinafter referred to as the Structures Act) provides for the establishment of a new generation of municipalities and essentially lays the foundation for a new system of local government in South Africa. The Structures Act deals fairly extensively with the Municipal Council and provides for issues such as the election, removal from office of councillors, and the internal proceedings in and the dissolution of the Council.
- **Key Section of the legislation:** Sec34 (4) of the MSA states that “The MEC for local government in a province may dissolve a municipal council in a province in accordance with the provisions of section 139 of the Constitution of the Republic of South Africa, 1996”.
- **Consequences:** *The MEC concerned, must be individually held liable for a dysfunctional municipality and failing to execute the constitutional and developmental mandate if no interventions are made by the concerned MEC.*
- **Case Study:** Since the Constitution was adopted in 1996, the number of Section 139 interventions has increased from a total of 17 between 1996-2005, to a total of 63 between 2006 and 2015.

Local Government Municipal Structures Act 117 of 1998



- **Key Section of the legislation:** Sec40 of the Structures Act states that “A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given”.
- **Consequences:** *If the Speaker is underperforming, or fails to execute his or her fiduciary responsibilities, the municipal council has powers and not the political party to remove him or her but a notice must be given first to move a motion for the removal of the speaker.*
- **Case Study:** The removal of the Mayor and the Speaker in the Nelson Mandela Metro is a case in point. Whether this was done with good intention or not, Sec40 of the Structures Act was put on a test and the removal was practicable.

Municipal System Act 32 of 2000 & its amendment of 2011



- **Brief Narrative:** The System Act, Act no 32 of 2000 and its amendment of 2011 (“the Systems Act”) defines the legal nature of a municipality and provides for the manner in which municipal powers and functions are exercised and performed. In addition, the Systems Act provides the framework for local public administration.
- **Key Section of the legislation:** Chapter 12 (119) states that “A councillor who attempts to influence the municipal manager or any other staff member not to enforce an obligation in terms of this Act, any other applicable legislation or any by-law or a decision of the council of the municipality is guilty of an offence”.
- **Consequences:** *On conviction a councillor is liable to a fine or to imprisonment for a period not exceeding two years. A person convicted for an offence and sentenced to more than 12 month’s imprisonment without the option of a fine, is disqualified to remain a councillor of the specific municipality and to become a councillor of any municipality for a period of five years as from conviction.*
- **Case Study:** Councillors in municipalities were removed from office, but get employed in other institutions of government as employees, There is a need for an integrated online database to bar these persons from being employed in the state institutions through **a revolving door**.

Municipal Finance Management Act, Act no 56 of 2003 (MFMA)



- **Brief Narrative:** The Municipal Finance Management Act 56 of 2003 (MFMA) is intended to ensure sound and sustainable financial management and deepens the budgetary process in municipalities by making community involvement compulsory.
- **Key Section of the legislation:** S133 (1) of the MFMA states “If the AO of a municipality or municipal entity fails to submit financial statements to the AGSA in accordance with section 126 (1) or (2), or if the mayor fails to table the annual report of the municipality or a municipal entity in the council in accordance with section 127(2)”.
- **Consequences:** *The municipal council may institute disciplinary actions against the AO or any other person or any committee responsible for the failure of the municipality to report to the AGSA.*
- **Case Study:** There are many incidences where the AOs were removed from their positions by the instruction of the municipal council.

Municipal Finance Management Act, Act no 56 of 2003 (MFMA)



- **Key Section of the legislation:** MFMA regulations restrict the way in which municipalities may invest funds. The MFMA does not allow municipalities to bank with a mutual bank. Section 62 of the MFMA sets out the financial management responsibilities of the AO. See also s.6 of the 'Municipal Investment Regulations' (Government Notice R308), 2005).
- **Consequences:** *The municipal council may institute disciplinary actions against the AO or any other person (CFO) when found to have invested funds in mutual banks.*
- **Case Study:** The case in point is the municipalities in Limpopo among others, Capricorn and Vhembe District Municipalities. Several municipal mayors were set aside out of the interventions made by *the Premier of the Limpopo Province in terms of sec154(1) of the constitution.*

Municipal Finance Management Act, Act no 56 of 2003 (MFMA)



- **Key Section of the legislation:** 32. (1) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure— (a) in the case of unauthorised expenditure, is— (i) authorised in an adjustments budget; or (ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council. (4) The AO must promptly inform the mayor, the COGTA MEC in the province and the AGSA, in writing, of— (a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality; (b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and (c) the steps that have been taken— (i) to recover or rectify such expenditure; and (ii) to prevent a recurrence of such expenditure. (6) The AO must report to the SAPS all alleged cases that constitute a criminal offence; and theft and fraud that occurred in the municipality.

Municipal Finance Management Act, Act no 56 of 2003 (MFMA)



- **Consequences:** *The Municipal Council takes responsibility to make sure that the monies of the municipality are recovered and the persons liable for the offense if the alleged cases of irregular expenditure constitute a criminal offence; and theft and fraud that occurred in the municipality. The SAPS must obtain warrant of arrest to make sure that culprits face the might of the law and such occurrences are prevented in future.*
- **Case Study:** With the new amendments of the Public Audit Act, there could be more arrest as the AGSA may submit a list of municipalities to the Hawks, Special Investigating Unit and the Public Protector

Municipal Finance Management Act, Act no 56 of 2003 (MFMA)



- **Key Section of the legislation:** s. 63(1) of the MFMA 'Asset and liability management' This section provides among other things that '(1) The accounting officer of a municipality is responsible for the management of the revenue of the municipality. (2) The accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure— (a) that the municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the municipality's credit control and debt collection policy'; and '(f) that the municipality has and maintains a system of internal control in respect of debtors and revenue'.
- **Consequences:** *Section 5B(3) of the Public Audit Amendment Act 5 of 2018 provides that, if the AO fails to act on the AG's audit findings of a material irregularity that has resulted in a financial loss to the State, and recommendations regarding the recovery of monies owing, the AGSA must take remedial action which must include a directive to the AO or accounting authority to determine the amount of the loss, if not yet determined, and to recover such loss*
- **Case Study:** Municipalities owe ESKOM payment for electricity for the past 8yrs and defied court orders. Amount owed to Eskom has ballooned to R17bn. Minister Mkhize appeared before parliament's SCOPA. Eskom cutting off the electricity supply to entire towns, prompted businesses to go to court to have power restored. Defiance of a court order amounts to criminal offence of contempt of court.

Public Audit Act, Act 25 of 2004 and Amendments



- **Brief Narrative:**, President Cyril Ramaphosa has signed the Public Audit Amendment Act which gives the AGSA powers to act against irregular spending by the state. The Audit Amendment Act will give the AGSA the power to refer wrongdoing to the law enforcement agencies for criminal charges. He can also recover money from officials by issuing them with a certificate of debt to recover that money.
- **Key Section of the legislation:** Chapter 2 5B. (2) states that “The AGSA must submit a copy of the certificate of debt, referred to in subsection (1), to the responsible executive authority to collect the amount specified in the certificate of debt from the accounting officer or accounting authority in terms of the debt recovery process applicable to the executive authority”.
- **Consequences:** *The concerned AO is responsible to pay back the money of the municipality.*
- **Case Study:** It is anticipated that the AGSA may submit a list of municipalities to the Hawks, Special Investigating Unit and the Public Protector to be investigated.

Q & A plus Comments

Question

- Based on the key consequences outlined in the respective legislations (System Act, Structures Act, MFMA and Public Audit Act), outline how will these consequences be implemented?

