



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 463 Cape Town 30 January 2004 No. 25960

THE PRESIDENCY

No. 82

30 January 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 44 of 2003: Local Government: Municipal Systems Amendment Act, 2003.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 22 January 2004.)

ACT

To amend the Local Government: Municipal Systems Act, 2000, so as to delete certain definitions and insert others; to make new provision regarding the assignment of functions or powers to municipalities; to provide for the submission of annual performance reports by municipalities; to provide for the establishment of municipal entities; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 32 of 2000, as amended by section 35 of Act 51 of 2002

1. Section 1 of the Local Government: Municipal Systems Act, 2000 (hereinafter referred to as the principal Act), is hereby amended by—
- (a) the insertion after the definition of “basic municipal services” of the following definition:

“**‘board of directors’**, in relation to a municipal entity, means the board of directors of the entity;”;
 - (b) the insertion after the definition of “district municipality” of the following definition:

“**‘effective control’**, in relation to a private company, means the power which a shareholder in the private company may have—

 - (a) to appoint or remove at least the majority of the board of directors of the private company; or
 - (b) to control at least the majority of the voting rights at a general meeting of the private company;”;
 - (c) the insertion after the definition of “executive authority” of the following definition:

“**‘external service provider’** means an external mechanism referred to in section 76(b) which provides a municipal service for a municipality;”;
 - (d) the insertion after the definition of “Minister” of the following definition:

“**‘multi-jurisdictional service utility’** means a body established in terms of section 87;”;
 - (e) the substitution for the definition of “municipal entity” of the following definition:

“**‘municipal entity’** means —

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (a) **[a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities, and includes, in the case of a company under such ownership control, any subsidiary of that company]** a private company referred to in section 86B(1)(a); [or] 5
- (b) a service utility; or
- (c) a multi-jurisdictional service utility.”;
- (f) the insertion after the definition of “municipal entity” of the following definition: 10
 “**‘Municipal Finance Management Act’** means the Local Government: Municipal Finance Management Act, 2003, and any regulations made under that Act.”;
- (g) the insertion after the definition of “national organ of state” of the following definition: 15
 “**‘National Treasury’** means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”;
- (h) the insertion after the definition of “organ of state” of the following definition: 20
 “**‘parent municipality’**—
 (a) in relation to a municipal entity which is a private company in respect of which effective control vests in a single municipality, means that municipality; 25
 (b) in relation to a municipal entity which is a private company in respect of which effective control vests in two or more municipalities collectively, means each of those municipalities;
 (c) in relation to a municipal entity which is a service utility, means the municipality which established the entity; or 30
 (d) in relation to a municipal entity which is a multi-jurisdictional service utility, means each municipality which is a party to the agreement establishing the service utility.”;
- (i) the deletion of the definition of “ownership control”; 35
- (j) the insertion after the definition of “prescribe” of the following definition:
 “**‘private company’** means a company referred to in sections 19 and 20 of the Companies Act, 1973 (Act No. 61 of 1973).”; and
- (k) the substitution for the definition of “service utility” of the following definition: 40
 “**‘service utility’** means **[a municipal entity established in terms of section 82(1)(c)]** a body established in terms of section 86H.”.

Substitution of section 9 of Act 32 of 2000

2. The following section is hereby substituted for section 9 of the principal Act:

“Assignment of functions or powers to municipalities generally by Acts of Parliament or provincial Acts 45

9. (1) A Cabinet member or Deputy Minister seeking to initiate the assignment of a function or power by way of an Act of Parliament to municipalities in general, or any category of municipalities, must within a

reasonable time before the draft Act providing for the assignment is introduced in Parliament—

- (a) request the Financial and Fiscal Commission to assess the financial and fiscal implications of the legislation, after informing the Financial and Fiscal Commission of the possible impact of such assignment on—
 - (i) the future division of revenue between the spheres of government in terms of section 214 of the Constitution;
 - (ii) the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities; and
 - (iii) the transfer, if any, of employees, assets and liabilities; and
 - (b) consult the Minister, the Minister of Finance and organised local government representing local government nationally with regard to—
 - (i) the assessment by the Financial and Fiscal Commission contemplated in paragraph (a);
 - (ii) the policy goals to be achieved by the assignment and the reasons for utilising assignment as the preferred option;
 - (iii) the financial implications of the assignment projected over at least three years;
 - (iv) any possible financial liabilities or risks after the three-year period referred to in subparagraph (iii);
 - (v) the manner in which additional expenditure by municipalities as a result of the assignment will be funded;
 - (vi) the implications of the assignment for the capacity of municipalities;
 - (vii) the assistance and support that will be provided to municipalities in respect of the assignment; and
 - (viii) any other matter that may be prescribed.
- (2) An MEC seeking to initiate the assignment of a function or power by way of a provincial Act to municipalities, or any category of municipalities, in the province must, within a reasonable time before the draft provincial Act providing for the assignment is introduced in the relevant provincial legislature—
- (a) request the Financial and Fiscal Commission to assess the financial and fiscal implications of the legislation, after informing the Financial and Fiscal Commission of the possible impact of such assignment on—
 - (i) the future division of revenue between the spheres of government in terms of section 214 of the Constitution;
 - (ii) the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities; and
 - (iii) the transfer, if any, of employees, assets and liabilities; and
 - (b) consult the MEC for local government, the MEC responsible for finance, and organised local government representing local government in the province, with regard to—
 - (i) the assessment by the Financial and Fiscal Commission contemplated in paragraph (a);
 - (ii) the policy goals to be achieved by the assignment and the reasons for utilising assignment as the preferred option;
 - (iii) the financial implications of the assignment projected over at least three years;
 - (iv) any possible financial liabilities or risks after the three-year period referred to in subparagraph (iii);
 - (v) the manner in which additional expenditure by municipalities as a result of the assignment will be funded;
 - (vi) the implications of the assignment for the capacity of municipalities;

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (vii) the assistance and support that will be provided to municipalities in respect of the assignment; and
 - (viii) any other matter that may be prescribed.
- (3) When draft legislation referred to in subsection (1) or (2) is introduced in Parliament or a provincial legislature, the legislation must be accompanied by—
- (a) a memorandum—
 - (i) giving at least a three-year projection of the financial and fiscal implications of the assignment of that function or power for those municipalities;
 - (ii) disclosing any possible financial liabilities or risks after the three-year period;
 - (iii) indicating how any additional expenditure by those municipalities will be funded; and
 - (iv) indicating the implications of the assignment for the capacity of those municipalities; and
 - (b) the assessment of the Financial and Fiscal Commission referred to in subsection (1)(a) or (2)(a), as the case may be.”

Substitution of section 10 of Act 32 of 2000

3. The following section is hereby substituted for section 10 of the principal Act:

“Assignment of functions or powers to specific municipalities by acts of executive or by agreement

10. If a function or power is assigned to any specific municipality in terms of a power contained in an Act of Parliament or a provincial Act, or by agreement in terms of section 99 or 126 of the Constitution, the organ of state assigning the function or power must, before assigning the function or power, submit to the Minister and the National Treasury a memorandum —

- (a) giving at least a three-year projection of the financial implications of that function or power for the municipality; and
- (b) disclosing any possible financial liabilities or risks after the three-year period; and
- (c) indicating how any additional expenditure by the municipality will be funded.”

Insertion of section 10A in Act 32 of 2000

4. The following section is hereby inserted in the principal Act after section 10:

“Funding and capacity building

10A. The Cabinet member, MEC or other organ of state initiating an assignment of a function or power to a municipality in terms of section 9 or 10, must take appropriate steps to ensure sufficient funding, and such capacity-building initiatives as may be needed, for the performance of the assigned function or power by the municipality if —

- (a) the assignment of the function or power imposes a duty on the municipality;
- (b) that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and
- (c) the performance of that duty has financial implications for the municipality.”

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

Insertion of sections 21A and 21B in Act 32 of 2000

5. The following sections are hereby inserted in the principal Act, after section 21:

“Documents to be made public

- 21A.** (1) All documents that must be made public by a municipality in terms of a requirement of this Act, the Municipal Finance Management Act or other applicable legislation, must be conveyed to the local community —
- (a) by displaying the documents at the municipality’s head and satellite offices and libraries;
 - (b) by displaying the documents on the municipality’s official website, if the municipality has a website as envisaged by section 21B; and
 - (c) by notifying the local community, in accordance with section 21, of the place, including the website address, where detailed particulars concerning the documents can be obtained.
- (2) If appropriate, any notification in terms of subsection (1) (c) must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.

Official website

- 21B.** (1) Each municipality must—
- (a) establish its own official website if the municipality decides that it is affordable; and
 - (b) place on that official website information required to be made public in terms of this Act and the Municipal Finance Management Act.
- (2) If a municipality decides that it is not affordable for it to establish its own official website, it must provide the information in terms of legislation referred to in subsection (1)(b) for display on an organised local government website sponsored or facilitated by the National Treasury.
- (3) The municipal manager must maintain and regularly update the municipality’s official website, if in existence, or provide the relevant information as required by subsection (2).”

Substitution of section 46 of Act 32 of 2000

6. The following section is hereby substituted for section 46 of the principal Act:

“Annual performance reports

- 46.** (1) A municipality must prepare for each financial year a performance report reflecting —
- (a) the performance of the municipality and of each external service provider during that financial year;
 - (b) a comparison of the performances referred to in paragraph (a) with targets set for and performances in the previous financial year; and
 - (c) measures taken to improve performance.
- (2) An annual performance report must form part of the municipality’s annual report in terms of Chapter 12 of the Municipal Finance Management Act.”

Amendment of section 55 of Act 32 of 2000

7. Section 55 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) proper and diligent compliance with [applicable municipal finance management legislation] the Municipal Finance Management Act.”

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003**Amendment of section 57 of Act 32 of 2000**

8. Section 57 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsections:

“(4A) The provisions of the Municipal Finance Management Act conferring responsibilities on the accounting officer of a municipality must be regarded as forming part of the performance agreement of a municipal manager.” 5

(4B) Bonuses based on performance may be awarded to a municipal manager or a manager directly accountable to the municipal manager after the end of the financial year and only after an evaluation of performance and approval of such evaluation by the municipal council concerned.”. 10

Repeal of section 58 of Act 32 of 2000

9. Section 58 of the principal Act is hereby repealed.

Amendment of section 74 of Act 32 of 2000

10. Section 74 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act, the Municipal Finance Management Act and [with] any other applicable legislation.”. 20

Amendment of section 78 of Act 32 of 2000

11. Section 78 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) If a municipality decides in terms of subsection (2)(b) to explore the possibility of providing the municipal service through an external mechanism it must— 25

(a) give notice to the local community of its intention to explore the provision of the municipal service through an external mechanism; [and] 30

(b) assess the different service delivery options in terms of section 76(b), taking into account— 35

(i) the direct and indirect costs and benefits associated with the project, including the expected effect of any service delivery mechanism on the environment and on human health, well-being and safety; 40

(ii) the capacity and potential future capacity of prospective service providers to furnish the skills, expertise and resources necessary for the provision of the service; 45

(iii) the views of the local community; 40

(iv) the likely impact on development, job creation and employment patterns in the municipality; and

(v) the views of organised labour; and

(c) conduct or commission a feasibility study which must be taken into account and which must include— 45

(i) a clear identification of the municipal service for which the municipality intends to consider an external mechanism; 50

(ii) an indication of the number of years for which the provision of the municipal service through an external mechanism might be considered; 50

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (iii) the projected outputs which the provision of the municipal service through an external mechanism might be expected to produce;
 - (iv) an assessment as to the extent to which the provision of the municipal service through an external mechanism will—
 - (aa) provide value for money;
 - (bb) address the needs of the poor;
 - (cc) be affordable for the municipality and residents; and
 - (dd) transfer appropriate technical, operational and financial risk;
 - (v) the projected impact on the municipality's staff, assets and liabilities;
 - (vi) the projected impact on the municipality's integrated development plan;
 - (vii) the projected impact on the municipality's budgets for the period for which an external mechanism might be used, including impacts on revenue, expenditure, borrowing, debt and tariffs; and
 - (viii) any other matter that may be prescribed.”; and
- (b) by the addition of the following subsection:
- “(6) The national government or relevant provincial government may, in accordance with an agreement, assist municipalities in carrying out a feasibility study referred to in subsection (3)(c), or in preparing service delivery agreements.”.

Substitution of section 80 of Act 32 of 2000

12. The following section is hereby substituted for section 80 of the principal Act:

“Provision of services through service delivery agreements with external mechanisms

80. (1) If a municipality decides to provide a municipal service through a service delivery agreement in terms of section 76(b) with—

- (a) a municipal entity or another municipality **[or a national or provincial organ of state]**, it may, subject to subsection (3), negotiate and enter into such an agreement with the relevant municipal entity or municipality **[or organ of state]** without applying Part 3 of this Chapter; **[or]**

(aA) a national or provincial organ of state, it may enter into such an agreement with the relevant organ of state without applying Part 3 of this Chapter; or

- (b) any institution or entity, or any person, juristic or natural, not mentioned in paragraph (a) or (aA), it must apply Part 3 of this Chapter before entering into such an agreement with any such institution, entity or person.

(2) Before a municipality enters into a service delivery agreement **[for a basic municipal service]** with an external service provider it must establish a **[mechanism and]** programme for community consultation and information dissemination regarding the appointment of the external service provider and the contents of the service delivery agreement. The contents of a service delivery agreement must be communicated to the local community through the media.

(3) (a) Where a municipality decides to enter into a service delivery agreement with another municipality as contemplated by section 76(b)(ii), that other municipality must conduct or commission a feasibility study, which it must take into account, before the service delivery agreement is entered into.

- (b) The feasibility study referred to in paragraph (a), must include—
 - (i) an assessment on the impact on the budget of that other municipality, and on its assets, liabilities and staff expenditure, for each of the

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- financial years that it intends to serve as an external service provider:
- (ii) an assessment on whether it will be necessary to increase the number of staff to enable that other municipality to be an external service provider, and whether it will be necessary to transfer or second any staff from the appointing municipality to that other municipality;
 - (iii) an assessment on the ability of that other municipality to absorb any commitments, liabilities or employees involved, if and when the appointment as external service provider ends; and
 - (iv) any other relevant information as may be prescribed.

Amendment of section 81 of Act 32 of 2000

13. Section 81 of the principal Act is hereby amended—

- (a) by the substitution for subparagraph (v) of paragraph (a) of subsection (2) of the following subparagraph:

“(v) managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality, subject to **[applicable municipal finance management legislation]** the Municipal Finance Management Act;” and

- (b) by the insertion after paragraph (b) of subsection (2) of the following paragraph:

“(bA) must ensure that the agreement provides for a dispute-resolution mechanism to settle disputes between the municipality and the service provider;”.

Repeal of section 82 of Act 32 of 2000

14. Section 82 of the principal Act is hereby repealed.

Amendment of section 83 of Act 32 of 2000

15. Section 83 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) **[are competitive, fair, transparent, equitable and cost-effective]** comply with Chapter 11 of the Municipal Finance Management Act;”.

Substitution of heading to Part 4 of Chapter 8 of Act 32 of 2000

16. The following heading is hereby substituted for the heading to Part 4 of Chapter 8 of the principal Act:

“***Part 4: Internal municipal service districts***”.

Insertion of Part 4A in Chapter 8 of Act 32 of 2000

17. The following Part is hereby inserted in the principal Act after section 86:

“***Part 4A: Regulations and guidelines regarding municipal services***

Regulations and guidelines regarding municipal services

86A. (1) The Minister may for purposes of this Chapter make regulations or issue guidelines in accordance with section 120 to provide for or regulate the following matters:

- (a) The preparation, adoption and implementation of a municipal tariff policy;
- (b) the subsidisation of tariffs for poor households through—
 - (i) cross-subsidisation within and between services;
 - (ii) equitable share allocations to municipalities; and
 - (iii) national and provincial grants to municipalities;
- (c) limits on tariff increases;

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (d) criteria to be taken into account by municipalities when imposing surcharges on tariffs for services and determining the duration thereof;
 - (e) incentives and penalties to encourage —
 - (i) the economical, efficient and effective use of resources when providing services;
 - (ii) the recycling of waste; and
 - (iii) other environmental objectives;
 - (f) criteria to be taken into account by municipalities when assessing options for the provision of a municipal service;
 - (g) measures against malpractice in selecting and appointing service providers, including measures against the stripping of municipal assets;
 - (h) mechanisms and procedures for the co-ordination and integration of sectoral requirements in terms of legislation with this Chapter, and the manner in which municipalities must comply with these;
 - (i) standard draft service delivery agreements;
 - (j) the minimum content and management of service delivery agreements;
 - (k) additional matters that must be included in a feasibility study in terms of section 78(3)(c), which may include—
 - (i) the strategic and operational costs and benefits of an external mechanism in terms of the municipality's strategic objectives;
 - (ii) an assessment of the municipality's capacity to effectively monitor the provision of the municipal service through an external mechanism and to enforce the service delivery agreement;
 - (l) performance guarantees by service providers; and
 - (m) any other matter that would facilitate —
 - (i) the effective and efficient provision of municipal services; or
 - (ii) the application of this Chapter.
- (2) The Minister may only make regulations and issue guidelines contemplated in subsection (1)(a) to (e) after consulting with the Minister of Finance and any other Cabinet member whose portfolio is affected by such regulations and guidelines.
- (3) When making regulations or issuing guidelines in terms of section 120 to provide for or regulate the matters mentioned in subsection (1), the Minister must—
- (a) take into account the capacity of municipalities to comply with such regulations and guidelines; and
 - (b) differentiate between different kinds of municipalities according to their respective capacities.

Insertion of heading and sections 86B, 86C, 86D, 86E, 86F, 86G, 86H, 86I, 86J and 86K in Act 32 of 2000

18. The following headings and sections are hereby inserted in the principal Act after section 86A:

“CHAPTER 8A**MUNICIPAL ENTITIES*****Part 1: General provisions*****Kinds of municipal entities**

- 86B.** (1) There are the following kinds of municipal entities:
- (a) a private company—

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (i) established by one or more municipalities in terms of Part 2; or
- (ii) in which one or more municipalities have acquired or hold an interest in terms of Part 2;

- (b) a service utility established by a municipality in terms of Part 3; and
- (c) a multi-jurisdictional service utility established by two or more municipalities in terms of Part 4.

(2) No municipality may establish, or participate in the establishment of, or acquire or hold an interest in, a corporate body, including a trust, except where such corporate body is—

- (a) a private company, service utility or multi-jurisdictional service utility referred to in subsection (1); or
- (b) a fund for the benefit of its employees in terms of a law regulating pensions or medical aid schemes.

(3) Subsection (2) does not apply to the acquisition by a municipality for investment purposes of securities in a company listed on the Johannesburg Securities Exchange in accordance with the investment framework envisaged in section 13 of the Municipal Finance Management Act.

Part 2: Private companies**Establishment and acquisition of private companies**

86C. (1) A municipality may, subject to subsection (2)—

- (a) establish or participate in the establishment of a private company in accordance with the Companies Act, 1973 (Act No. 61 of 1973); or
- (b) acquire or hold an interest in a private company in accordance with the Companies Act, 1973 (Act No. 61 of 1973).

(2) (a) A municipality may in terms of subsection (1)(a) or (b) either acquire or hold full ownership of a private company, or acquire or hold a lesser interest in a private company.

(b) A municipality may acquire or hold such a lesser interest in a private company only if all the other interests are held by—

- (i) another municipality or municipalities;
- (ii) a national or provincial organ of state or organs of state; or
- (iii) any combination of institutions referred to in subparagraphs (i) and (ii).

(c) A municipality may, despite paragraph (b), acquire or hold an interest in a private company in which an investor other than another municipality or a national or provincial organ of state has an interest, but only if effective control in the private company vests in—

- (i) that municipality;
- (ii) another municipality; or
- (iii) that municipality and another municipality collectively.

(3) If a municipality establishes a private company or acquires or holds an interest in such a company, it must comply with the Companies Act, 1973 (Act No. 61 of 1973), and any other law regulating companies, but if any conflict arises between that Act or such law and a provision of this Act, this Act prevails.

Legal status of private companies established by municipalities or in which municipalities hold interests

86D. (1) A private company referred to in section 86C(1)—

- (a) is a municipal entity if a municipality, or two or more municipalities collectively, have effective control of the private company; or

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

(b) is a public entity to which the Public Finance Management Act, 1999 (Act No. 1 of 1999), applies if ownership control in the company, within the meaning of that Act, is held by a national or provincial organ of state.

(2) A private company which is a municipal entity—

- (a) must restrict its activities to the purpose for which it is used by its parent municipality in terms of section 86E(1)(a); and
- (b) has no competence to perform any activity which falls outside the functions and powers of its parent municipality contemplated by section 8.

Conditions precedent for establishing or acquiring interests in private companies

86E. (1) A municipality may establish a private company or acquire an interest in such a company only—

- (a) for the purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers referred to in section 8;
- (b) if the municipality can demonstrate that—
 - (i) there is a need to perform that function or power in accordance with business practices in order to achieve the strategic objectives of the municipality more effectively; and
 - (ii) the company would benefit the local community; and
- (c) if any other conditions that may be prescribed have been complied with.

(2) If a municipality establishes a private company or acquires an interest in such a company for the purpose of using that company as a mechanism to provide a municipal service, Chapter 8 applies.

Conditions precedent for co-owning of private companies

86F. If two or more municipalities intend to establish a private company or to acquire interests in the same private company, each of those municipalities must—

- (a) comply with section 86E;
- (b) consider and reach agreement on proposals for shared control of the company; and
- (c) consider cash flow projections of the company's proposed operations for at least three financial years.

Disposal of companies and equity interests in companies

86G. A municipality may transfer ownership or otherwise dispose of—

- (a) a wholly owned private company, subject to the Municipal Finance Management Act; or
- (b) an interest in a private company —
 - (i) subject to section 14 of the Municipal Finance Management Act; and
 - (ii) if that transfer or disposal would not result in an infringement of section 86C(2) by another municipality which holds an interest in the company.

Part 3: Service utilities

Establishment

86H. (1) A municipality may pass a by-law establishing a service utility.

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (2) A by-law establishing a service utility must—
- (a) state the purpose for which the service utility is established;
 - (b) confer the powers and impose the duties on the service utility which are necessary for the attainment of such purpose;
 - (c) provide for—
 - (i) a board of directors to manage the service utility;
 - (ii) the number of directors to be appointed;
 - (iii) the appointment of directors, the filling of vacancies and the replacement and recall of directors by the parent municipality;
 - (iv) the terms and conditions of appointment of directors;
 - (v) the appointment of a chairperson;
 - (vi) the operating procedures of the board of directors;
 - (vii) the delegation of powers and duties to the board of directors;
 - (viii) any other matter necessary for the proper functioning of the board of directors;
 - (ix) the acquisition of infrastructure, goods, services, supplies or equipment by the service utility, or the transfer of infrastructure, goods, services, supplies or equipment to the service utility;
 - (x) the appointment of staff by the service utility, or the transfer or secondment of staff to the service utility in accordance with applicable labour legislation;
 - (xi) the terms and conditions on which any acquisition, transfer, appointment or secondment is made;
 - (xii) the governance of the service utility; and
 - (xiii) any other matter necessary for the proper functioning of the service utility; and
 - (d) determine budgetary and funding arrangements for implementation of the by-law.
- (4) No by-law may confer on a service utility any functions or powers falling outside the competence of the parent municipality contemplated by section 8.

Legal status of service utilities

- 86I.** (1) A service utility is a juristic person and a municipal entity under the sole control of the municipality which established it.
- (2) A service utility—
- (a) must restrict its activities to the purpose for which it was established; and
 - (b) has no competence to perform any activity which falls outside its functions or powers in terms of a by-law of the municipality.

Conditions precedent for establishing service utilities

- 86J.** (1) A municipality may establish a service utility only—
- (a) for the purpose of utilising the service utility as a mechanism to assist the municipality in the performance of any of its functions or powers referred to in section 8;
 - (b) if the municipality can demonstrate—
 - (i) that that function or power could be performed more efficiently by a separate structure in order to achieve the strategic objectives of the municipality; and
 - (ii) that the service utility would benefit the local community; and
 - (c) if all other conditions that may be prescribed have been complied with.

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

(2) If a municipality establishes a service utility for the purpose of using that service utility as a mechanism to provide a municipal service, Chapter 8 applies.

Disestablishment of service utilities

86K. (1) A municipality may pass a by-law disestablishing a service utility which it has established. 5

(2) If a service utility is disestablished—

- (a) all assets, liabilities, rights and obligations of the service utility vest in the municipality; and
- (b) staff of the service utility must be dealt with in accordance with applicable labour legislation. 10

Part 4: Multi-jurisdictional service utilities**Substitution of section 87 of Act 32 of 2000**

19. The following section is hereby substituted for section 87 of the principal Act:

“Establishment of multi-jurisdictional service utilities

15

87. Two or more municipalities, by written agreement, may establish a multi-jurisdictional service utility to perform any function or power envisaged by section 8 in their municipal areas or in any designated parts of their municipal areas.”

Amendment of section 88 of Act 32 of 2000

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20. Section 88 of the principal Act is hereby amended by—

- (a) the substitution for the heading of the following heading:

“Minister requesting [the] establishment of multi-jurisdictional [municipal service districts] service utilities”; and

- (b) the substitution for subsection (1) of the following subsection: 25

“(1) The Minister may, in the national interest and in consultation with the [national Minister] Cabinet member responsible for the functional area in question, request two or more municipalities to establish [designated] a multi-jurisdictional [municipal service districts] service utility to conform to the requirements of national legislation applicable to the provision of a specific municipal service.” 30

Substitution of section 89 of Act 32 of 2000

21. The following section is hereby substituted for section 89 of the principal Act:

“Contents of agreements establishing multi-jurisdictional [municipal service districts] service utilities

35

89. [(1)] An agreement establishing a multi-jurisdictional [municipal service district] service utility must describe the rights, obligations and responsibilities of the [participating] parent municipalities, and must—

- (a) determine the boundaries of the [district] area for which the multi-jurisdictional service utility is established; 40
- (b) identify the municipal service or other function to be provided in terms of the agreement;
- [(c) determine the mechanism that will provide the service in the district;]
- (d) determine budgetary and funding [and scheduling] arrangements for implementation of the agreement; 45
- (e) provide for—

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (i) **[the establishment of a governing body]** a board of directors for the multi-jurisdictional **[municipal service district]** service utility;
 - (ii) the appointment of **[representatives of the]** directors by the respective **[participating]** parent municipalities **[to the governing body]**, the filling of vacancies and the replacement and recall of **[representatives]** directors; 5
 - (iii) the number of **[representatives]** directors appointed **[for]** by each **[participating]** parent municipality[, subject to subsection (2)]; 10
 - (iv) the terms and conditions of appointment of **[those representatives]** directors;
 - (v) the appointment of a chairperson;
 - (vi) the operating procedures of the **[governing body]** board of directors; 15
 - (vii) the delegation of powers and duties to the **[governing body consistent with section 92]** board of directors; and
 - (viii) any other matter relating to the proper functioning of the **[governing body]** board of directors;
 - (f) provide for— 20
 - (i) the acquisition of infrastructure, goods, services, supplies or equipment by the **[governing body]** multi-jurisdictional service utility, or the transfer of infrastructure, goods, services, supplies or equipment to the **[governing body]** multi-jurisdictional service utility; 25
 - (ii) the appointment of staff by the **[governing body]** multi-jurisdictional service utility, or the transfer or secondment of staff to the **[governing body]** multi-jurisdictional service utility in accordance with applicable labour legislation; and
 - (iii) the terms and conditions on which any acquisition, transfer, appointment or secondment is made; **[and]** 30
 - (g) determine the conditions for, and consequences of, the withdrawal from the agreement of a **[participating]** parent municipality;
 - (h) determine the conditions for, and consequences of, the termination of the agreement, including— 35
 - (i) the method and schedule for winding-up the operations of the **[district]** multi-jurisdictional service utility;
 - (ii) the distribution of the proceeds; and
 - (iii) the allocation among the **[participating]** parent municipalities of any assets and liabilities; and 40
 - (i) provide for—
 - (i) the governing of the multi-jurisdictional service utility;
 - (ii) compulsory written reports regarding the activities and performance of the multi-jurisdictional service utility to a parent municipality; 45
 - (iii) information that may be requested from the multi-jurisdictional service utility by a parent municipality;
 - (iv) the amendment of the agreement; and
 - (v) any other matter necessary for the proper functioning of the multi-jurisdictional service utility. 50
- [(2) A governing body must consist of between three and fifteen representatives.]”.**

Substitution of section 90 of Act 32 of 2000

22. The following section is hereby substituted for section 90 of the principal Act:

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

“Legal status of [governing bodies] multi-jurisdictional service utilities

90. (1) [The governing body of a] A multi-jurisdictional [municipal service district] service utility is a juristic person, and a municipal entity under the shared control of the parent municipalities.

(2) A multi-jurisdictional service utility—

(a) must restrict its activities to the object for which it was established;

and

(b) has no competence to perform any activity which falls outside its functions in terms of the agreement referred to in section 87.”.

Repeal of section 91 of Act 32 of 2000

23. Section 91 of the principal Act is hereby repealed.

Substitution of section 92 of Act 32 of 2000

24. The following section is hereby substituted for section 92 of the principal Act:

“Control of [governing bodies of] multi-jurisdictional [municipal service districts] service utilities

92. (1) [The governing body of a] A multi-jurisdictional [municipal service district] service utility—

(a) is accountable to the [participating] parent municipalities; and

(b) must comply with [any legislation applicable to the financial management of municipalities and municipal entities] the Municipal Finance Management Act.

(2) A [participating] parent municipality—

(a) is entitled to receive such regular written reports from the [governing body of a district] multi-jurisdictional service utility with respect to its activities and performance, as may be set out in the agreement establishing the [governing body] multi-jurisdictional service utility;

(b) may request the [governing body] multi-jurisdictional service utility to furnish it with such information regarding its activities as the [participating] parent municipality may reasonably require;

and

(c) may appoint a nominee to inspect, at any time during normal business hours, the books, records, operations and facilities of the [governing body] multi-jurisdictional service utility, and [of] those of its contractors relating to the [provision of the municipal service] performance of the function or power for which the [district] multi-jurisdictional service utility is established.”.

Substitution of section 93 of Act 32 of 2000

25. The following section is hereby substituted for section 93 of the principal Act:

“Termination of multi-jurisdictional [municipal service districts] service utilities

93. A multi-jurisdictional [municipal service district] service utility terminates—

(a) automatically, when there is only one remaining [participating] parent municipality;

(b) by written agreement among all of the [participating] parent municipalities; or

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (c) upon the termination date or the fulfilment of any condition for termination contained in the agreement establishing the [district] multi-jurisdictional service utility.”.

Insertion of parts 5, 6 and 7 in Chapter 8A of Act 32 of 2000

26. The following Parts are hereby inserted in Chapter 8A of the principal Act after section 93:

“Part 5: Duties and responsibilities of parent municipalities

Duties of parent municipalities with respect to municipal entities

- 93A.** The parent municipality of a municipal entity—
- (a) must exercise any shareholder, statutory, contractual or other rights and powers it may have in respect of the municipal entity to ensure that—
 - (i) both the municipality and the municipal entity comply with this Act, the Municipal Finance Management Act and any other applicable legislation; and
 - (ii) the municipal entity is managed responsibly and transparently, and meets its statutory, contractual and other obligations;
 - (b) must allow the board of directors and chief executive officer of the municipal entity to fulfil their responsibilities; and
 - (c) must establish and maintain clear channels of communication between the municipality and the municipal entity.

Parent municipalities having sole control

- 93B.** A parent municipality which has sole control of a municipal entity, or effective control in the case of a municipal entity which is a private company—
- (a) must ensure that annual performance objectives and indicators for the municipal entity are established by agreement with the municipal entity and included in the municipal entity’s multi-year business plan in accordance with section 87(5)(d) of the Municipal Finance Management Act;
 - (b) must monitor and annually review, as part of the municipal entity’s annual budget process as set out in section 87 of the Municipal Finance Management Act, the performance of the municipal entity against the agreed performance objectives and indicators; and
 - (c) may liquidate and disestablish the municipal entity —
 - (i) following an annual performance review, if the performance of the municipal entity is unsatisfactory;
 - (ii) if the municipality does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or
 - (iii) if the municipality has terminated the service delivery agreement or other agreement it had with the municipal entity.

Parent municipalities having shared control

- 93C.** Parent municipalities that have shared control of a municipal entity—
- (a) must enter into a mutual agreement determining and regulating—
 - (i) their mutual relationships in relation to the municipal entity;

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (ii) the exercise of any shareholder, contractual or other rights and powers they may have in respect of the municipal entity;
- (iii) the exercise of their powers and functions in terms of this Act and the Municipal Finance Management Act with respect to the municipal entity; 5
- (iv) measures to ensure that annual performance objectives and indicators for the municipal entity are established by agreement with the municipal entity and included in the municipal entity's multi-year business plan in accordance with section 87(5)(d) of the Municipal Finance Management Act; 10
- (v) the monitoring and annual review, as part of the municipal entity's annual budget process as set out in section 87 of the Municipal Finance Management Act, of the performance of the municipal entity against the established performance objectives and indicators; 15
- (vi) the payment of any monies by the municipalities to the municipal entity or by the municipal entity to the municipalities;
- (vii) procedures for the resolution of disputes between those municipalities;
- (viii) procedures governing conditions for and consequences of withdrawal from the municipal entity by a municipality; 20
- (ix) procedures for terminating the appointment and utilisation of the municipal entity as a mechanism for the performance of a municipal function;
- (x) the disestablishment of the municipal entity, the division, transfer or liquidation of its assets and the determination of the responsibility for its liabilities; and 25
- (xi) any other matter that may be prescribed; and
- (b) may liquidate and disestablish the municipal entity —
 - (i) following an annual performance review, if the performance of the municipal entity is unsatisfactory; 30
 - (ii) if the municipality does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or 35
 - (iii) if the municipality has terminated the service delivery agreement or other agreement it had with the municipal entity.

Municipal representatives

- 93D.** (1) The council of a parent municipality must designate a councillor or an official of the parent municipality, or both, as the representative or representatives of the parent municipality— 40
- (a) to represent the parent municipality as a non-participating observer at meetings of the board of directors of the municipal entity concerned; and
 - (b) to attend shareholder meetings and to exercise the parent municipality's rights and responsibilities as a shareholder, together with such other councillors or officials that the council may designate as representatives. 45
- (2) (a) The official lines of communications between a municipal entity and the parent municipality exist between the chairperson of the board of directors of the municipal entity and the mayor or executive mayor, as the case may be, of the parent municipality. 50
- (b) The mayor or executive mayor, as the case may be, of a parent municipality may at any time call or convene any meeting of shareholders or other general meeting comprising the board of directors of the municipal 55

entity concerned and the representatives of the parent municipality, in order for the board of directors to give account for actions taken by it.

(c) The council of a parent municipality may determine the reporting responsibilities of a municipal representative referred to in subsection (1)(a) or (b).

(3) (a) A municipal representative referred to in subsection (1)(b), must represent the parent municipality faithfully at shareholder meetings, without consideration of personal interest or gain, and must keep the council informed of—

- (i) how voting rights were exercised; and
- (ii) all relevant actions taken on behalf of the municipality by the representative.

(b) A municipal representative referred to in subsection (1)(a) or (b) —

- (i) must act in accordance with the instructions of the council; and
- (ii) may be reimbursed for expenses in connection with his or her duties as a municipal representative, but may not receive any additional compensation or salary for such duties.

Part 6: Governance of municipal entities

Appointment of directors

93E. (1) The board of directors of a municipal entity—

- (a) must have the requisite range of expertise to effectively manage and guide the activities of the municipal entity;
- (b) must consist of at least a third non-executive directors; and
- (c) must have a non-executive chairperson.

(2) The parent municipality of a municipal entity must, before nominating or appointing a director, establish a process through which—

- (a) applications for nomination or appointment are widely solicited;
- (b) a list of all applicants and any prescribed particulars concerning applicants is compiled; and
- (c) the municipal council makes the appointment or nomination from such list.

Disqualifications

93F. (1) A person is not eligible to be a director of a municipal entity if he or she —

- (a) holds office as a councillor of any municipality;
- (b) is a member of the National Assembly or a provincial legislature;
- (c) is a permanent delegate to the National Council of Provinces;
- (d) is an official of the parent municipality of that municipal entity;
- (e) was convicted of any offence and sentenced to imprisonment without the option of a fine, and a period of five years since completion of the sentence has not lapsed;
- (f) has been declared by a court to be of unsound mind; or
- (g) is an unrehabilitated insolvent.

(2) If a director of a municipal entity during that person's term of office becomes disqualified on a ground mentioned in subsection (1), such person ceases to be a director from the date of becoming disqualified.

Removal or recall of directors

93G. The parent municipality of a municipal entity may remove or recall a director appointed or nominated by that municipality—

- (a) if the performance of the director is unsatisfactory;
- (b) if the director, either through illness or for any other reason, is unable to perform the functions of office effectively; or

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (c) if the director, whilst holding office—
- (i) is convicted of fraud or theft or any offence involving fraudulent conduct; or
 - (ii) has failed to comply with or breached any legislation regulating the conduct of directors, including any applicable code of conduct.

Duties of directors

- 93H.** (1) The board of directors of a municipal entity must—
- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity;
 - (b) ensure that it and the municipal entity comply with all applicable legislation and agreements;
 - (c) communicate openly and promptly with the parent municipality of the municipal entity; and
 - (d) deal with the parent municipality of the municipal entity in good faith.
- (2) A director must—
- (a) disclose to the board of directors, and to the representative of the parent municipality, any direct or indirect personal or business interest that the director or his or her spouse or partner may have in any matter before the board, and must withdraw from the proceedings of the board when that matter is considered, unless the board decides that the director's direct or indirect interest in the matter is trivial or irrelevant; and
 - (b) at all times act in accordance with the Code of Conduct for directors referred to in section 93L.

Meetings of board of directors

- 93I.** (1) Meetings of the board of directors of a municipal entity must be open to the municipal representatives referred to in section 93D(1)(a).
- (2) Municipal representatives referred to in section 93D(1)(a) have non-participating observer status in a meeting of the board of directors of a municipal entity.

Appointment of chief executive officer

- 93J.** (1) The board of directors of a municipal entity must appoint a chief executive officer of the municipal entity.
- (2) The chief executive officer of a municipal entity is accountable to the board of directors for the management of the municipal entity.

Part 7: General

Establishment of and acquisition of interests in corporate bodies disallowed

- 93K.** (1) A municipal entity may not—
- (a) establish or participate in the establishment of a company or any other corporate body, including a trust; or
 - (b) acquire or hold an interest in a company or any other corporate body, including a trust.
- (2) Subsection (1) does not apply to—
- (a) the acquisition by a municipal entity of securities in a company listed on the Johannesburg Securities Exchange for investment purposes, subject to any applicable provisions of the Municipal Finance Management Act; or

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (b) a fund for the benefit of employees of a municipal entity in terms of a law regulating pensions or medical aid schemes.”.

Code of Conduct for directors and members of staff of municipal entity

93L. (1) (a) The Code of Conduct for councillors contained in Schedule 1 applies, with the necessary changes, to directors of a municipal entity. 5

(b) In the application of item 14 of Schedule 1 to directors of a municipal entity, that item must be regarded as providing as follows:

‘Breaches of Code

14. (1) The board of directors of a municipal entity may — 10

(a) investigate and make a finding on any alleged breach of a provision of this Code by a director; or

(b) establish a special committee —

(i) to investigate and make a finding on any alleged breach of a provision of this Code by a director; or 15

(ii) to make appropriate recommendations to the board of directors.

(2) If the board of directors or special committee finds that a director has breached a provision of this Code, the board of directors may — 20

(a) issue a formal warning to the director;

(b) reprimand the director;

(c) fine the director; or

(d) recommend to the parent municipality that the director be removed or recalled in terms of section 93G. 25

(3) The board of directors of a municipal entity must inform a parent municipality of that entity of any action taken against a director in terms of subsection (2).’.

(2) The Code of Conduct for municipal staff members contained in Schedule 2 applies, with the necessary changes, to members of staff of a municipal entity. 30

(3) For purposes of this section, any reference in Schedule 1 or 2 to a ‘councillor’, ‘MEC for local government in the province’, ‘municipal council’, ‘municipality’ and ‘rules and orders’ must, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a director of a municipal entity, parent municipality, board of directors, municipal entity and procedural rules, respectively.”. 35

Repeal of section 94 of Act 32 of 2000

27. Section 94 of the principal Act and the Part-heading preceding section 94 are hereby repealed. 40

Amendment of section 120 of Act 32 of 2000

28. Section 120 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the matters listed in sections 22, 37, 49, 72, [94] 86A and 104:”. 45

Insertion of item 14A in Schedule 2 to Act 32 of 2000

29. The following item is hereby inserted in Schedule 2 to the principal Act after item 14:

Disciplinary steps

14A. (1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.

(2) Such other disciplinary steps may include—

- (a) suspension without pay for no longer than three months;
- (b) demotion;
- (c) transfer to another post;
- (d) reduction in salary, allowances or other benefits; or
- (e) an appropriate fine.”.

Amendment of Table of Contents of Act 32 of 2000

30. The Table of Contents of the principal Act is hereby amended—

- (a) by the substitution for the references to sections 9 and 10 of the following references:

“9. Assignment of functions or powers to municipalities generally by Acts of Parliament or provincial Acts

10. Assignment of functions or powers to specific municipalities by acts of executive or by agreement”;

- (b) by the insertion after the reference to section 10 of the following reference: “10A. Funding and capacity building”;

- (c) by the insertion after the reference to section 21 of the following references: “21A. Documents to be made public
21B. Official website”;

- (d) by the substitution for the reference to section 46 of the following reference: “46. Annual performance reports”;

- (e) by the substitution for the reference to Part 4 of Chapter 8 of the following reference:

“***Part 4: Internal municipal service districts***”;

- (f) by the insertion after the reference to section 86 of the following references: 30

“***Part 4A: Regulations and guidelines regarding municipal services***

86A. Regulations and guidelines regarding municipal services

CHAPTER 8A

MUNICIPAL ENTITIES

Part 1: General provisions

86B. Kinds of municipal entities

Part 2: Private companies

86C. Establishment and acquisition of private companies

86D. Legal Status of private companies established by municipalities or in which municipalities hold interests

86E. Conditions precedent for establishing or acquiring interests in private companies

86F. Conditions precedent for co-owning of private companies

86G. Disposal of companies and equity interests in companies

Part 3: Service utilities

86H. Establishment

86I. Legal status of service utilities

86J. Conditions precedent for establishing service utilities

86K. Disestablishment of service utilities

Part 4: Multi-jurisdictional service utilities”;

- (g) by the substitution for the references to section 87, 88, 89 and 90 of the following references:

“87. Establishment of multi-jurisdictional [**municipal service districts**] service utilities

88. Minister requesting [**the**] establishment of multi-jurisdictional [**municipal service districts**] service utilities

89. Contents of agreements establishing multi-jurisdictional [**municipal service districts**] service utilities

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

90. Legal status of **[governing bodies]** multi-jurisdictional service utilities";
- (h) by the deletion of the reference to section 91;
- (i) by the substitution for the references to sections 92 and 93 of the following references:
- "92. Control of **[governing bodies of]** multi-jurisdictional **[municipal service districts]** service utilities
93. Termination of multi-jurisdictional **[municipal service districts]** service utilities";
- (j) by the insertion after the reference to section 93 of the following references:
- "Part 5: Duties and responsibilities of parent municipalities"***
- 93A. Duties of parent municipality with respect to municipal entities
- 93B. Parent municipalities having sole control
- 93C. Parent municipalities having shared control
- 93D. Municipal representatives
- Part 6: Governance of municipal entities***
- 93E. Appointment of directors
- 93F. Disqualifications
- 93G. Removal or recall of directors
- 93H. Duties of directors
- 93I. Meetings of board of directors
- 93J. Appointment of chief executive officer
- Part 7: General***
- 93K. Establishment of and acquisition of interests in corporate bodies disallowed
- 93L. Code of Conduct for directors and members of staff of municipal entity"; and
- (k) by the insertion after the reference to item 14 of Schedule 2 of the following reference:
- "14A. Disciplinary steps"***.

Transitional provisions

- 31.** (1) If a municipality has established any corporate body, including a trust, under or in terms of applicable legislation before this Act took effect, such a corporate body continues to exist, despite the provisions of Chapter 8A of the principal Act, until such corporate body is disestablished or liquidated, as the case may be.
- (2) A corporate body, including a trust, referred to in subsection (1) must be regarded as a municipal entity for the purposes of this Act, the principal Act and the Local Government: Municipal Finance Management Act, 2003, to the extent that the provisions of those Acts can be applied.
- (3) A municipality that has established a corporate body referred to in subsection (1), must within three months after this Act takes effect, publish a list of all such corporate bodies in the relevant provincial gazette and make that list public in terms of section 21A of the principal Act.
- (4) If, before this Act took effect —
- (a) a municipality or municipal entity has established a company referred to in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), the municipality or the parent municipality of the municipal entity may, despite that Act, pass a by-law converting the company into a service utility under the sole control of the municipality or parent municipality; or
- (b) two or more municipalities have established a company referred to in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), those municipalities may, despite that Act, enter into an agreement converting the company into a multi-jurisdictional service utility under the shared control of those municipalities.
- (5) A by-law referred to in subsection (4)(a) and an agreement referred to in subsection (4)(b) —
- (a) must substantially comply with sections 86H (2) and 89, respectively, of the principal Act; and

Act No. 44, 2003

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS AMENDMENT ACT, 2003

- (b) may provide for such transitional and other provisions as may be necessary to effectively convert the company into a service utility or multi-jurisdictional service utility, as the case may be.

Short title and commencement

32. This Act is called the Local Government: Municipal Systems Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*. 5