



**DEBT MANAGEMENT FRAMEWORK  
FOR WESTERN CAPE PROVINCE MUNICIPALITIES**

**By**

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## **DECLARATION**

I, Johannes Christoffel Petrus Tesselaar, hereby declare that the contents of this thesis represent my own unaided work, and that the thesis has not previously been submitted for academic examination towards any qualification. Furthermore, it represents my own opinions and not necessarily those of the Cape Peninsula University of Technology.

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## **ABSTRACT**

From a municipal perspective non-payment means that consumers, rate-payers and citizens are not fulfilling their obligations towards a particular municipality, contributing to a situation of insufficient available cash for day-to-day service delivery. The current debt situation in municipalities can be linked to the creation of a culture of non-payment due to the political situation in South Africa pre- and post-1994. Sections 1.1, 1.2 and 1.3 present the contributions and reasons for the current debt situation per the three spheres of government.

South African municipal debt increased by 88 percent (R44 billion) over the last five financial years, from R50 billion in 2009/2010 to R94 billion in 2013/2014. The trend of 15-20 percent per year increase in debt precludes the effective, efficient and economic provision of essential and emergency services to communities.

All municipalities need to ensure that an effective collection relationship exists and that municipalities implement policies, by-laws, processes, procedures and systems in this regard. However, many municipalities fail in their quest for effective collection, or lack the capacity to utilise enabling legislation to implement an efficient and effective debt collection framework.

This research study was conducted in response to this scenario, to identify and document existing problems through the development of guidelines and a framework for effective cash and debt collection. The guidelines will assist municipalities in collecting their outstanding debts.

A questionnaire survey was conducted with all category A and B municipalities in the Western Cape, with the Chief Financial Officer identified as the respondent. Analysis of the findings revealed shortcomings in the compliance with both high court judgments and underlying legislation.

These shortcomings were validated and taken into consideration in the formulation of the guidelines, as were best practices as prescribed in the legislation and identified in the literature review. The application of the framework in every municipality in the Western Cape is recommended, to improve debt collection as a means of enabling better service delivery to all citizens, particularly the poorest of the poor.

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## LIST OF ACRONYMS

Category A municipality	Metropolitan municipality
Category B municipality	Local municipality
Category C municipality	District municipality
CC	Close Corporation
CFO	Chief Finance Officer
CFOMR	Chief Finance Officer Metropolitan Revenue
IDP	Integrated Development Plan
IMFO	Institute of Municipal Finance Officers
MFMA	Municipal Finance Management Act, No. 56 of 2003
Municipalities	Local authorities
NCA	National Credit Act
No.	Number
(Pty)Ltd.	Property Limited
s	Section
SALGA	South African Local Government Association
SDBIP	Service Delivery Budget Implementation Plan
SMS	Short Message Service
v	Versus

# CHAPTER 1

## OVERVIEW

### 1.1. INTRODUCTION AND BACKGROUND

From a municipal perspective, non-payment means that consumers, rate-payers and citizens are not fulfilling their obligations towards a particular municipality and as such contribute to a situation of insufficient available cash for day-to-day service delivery. The current debt situation in municipalities can be linked to a situation of non-payment due to the political situation in South Africa pre- and post-1994. Sections 1.1, 1.2 and 1.3 below present the contribution and reasons for the current debt situation in each of the three spheres of government.

#### 1.1.1. National Government

The national sphere of government contributed the largest portion of the debt situation during the apartheid era, because of the unequal provision of services to different communities. The three main contributing reasons were:

- Apartheid;
- Transition; and
- Moratorium.

##### 1.1.1.1. Apartheid

In the agreement between the previous State President (F.W. de Klerk) and the former President of the ANC (Nelson Mandela), the then government acknowledged that due to the policy of apartheid, local government was not managed to the benefit of all communities. One of the consequences was that certain predominately previously disadvantaged (black, Asian/Indian and coloured), communities did not trust the system and withheld payment for services rendered to such an extent that in many communities no revenue was received or collected at all (South Africa, 1999a).

##### 1.1.1.2. Transition

Black local authorities and by implication, black communities, were subsidised by means of inter-governmental grants (subsidies) to balance their budgets (Western Cape (South Africa). Provincial Administration, Branch Community Services, 1994a).

Black communities were not used to paying, or were not paying in full, for services because of this system of subsidised services; therefore these community members were never given the opportunity to adopt the habit of paying for services rendered, nor were they given the opportunity to budget in this regard. Later, when a full service account was rendered, they withheld payment because it was unaffordable.

#### 1.1.1.3. Moratorium

The Kempton Park agreement also made provision that new local authorities would not inherit the liabilities of previous black local authorities, which meant that these liabilities (arrear debts) were written off. Further, it mandated municipalities to put a moratorium on arrears for all outstanding debt as at 2 January 1994 (South Africa, Kempton Park Agreement, 1994).

Although black local authorities were favourably accommodated in terms of debt and encouraged to start paying for municipal services, the opposite happened, namely, the continuous withholding of payment.

Because of the legal moratorium municipalities were unable to utilise normal collection methods and as a result of the legal moratorium consumer's debt increased to such an extent that in many instances it became uncollectable, because the amount owing was unaffordable given available monthly consumer income.

### **1.1.2. Provincial Government**

Provincial government, as the link between national and local government, played an indirect role in the non-payment situation, due to:

- Legislation; and
- Writing-off of arrears.

#### 1.1.2.1. Legislation

In terms of Section 6 of the Black Local Authorities Act, No. 102 of 1982(South Africa, 1982) the Provincial Administration was responsible for the provision of municipal services to black municipal areas. This Act was repealed by the Local Government: Transitional Act, No. 21 of 1993 (South Africa, 1993c).

In terms of this new legislation municipalities, rather than the Provincial Administration, were responsible for writing off of arrears. In communities where the new municipalities were unable to write-off arrears because of 89(9)(a) lack of funds, community members were not comfortable or willing to pay for services rendered, due to the large individual outstanding debt (*Die Burger*, 1994).

#### 1.1.2.2. Writing off of arrears

The inclusion of only black local authorities in the Kempton Park agreement, and the pressure on municipalities to place a moratorium on this debt as at 2 January, 1994, resulted in undertakings being made by national and provincial government to assist local authorities to write-off the outstanding debt (Western Cape (South Africa). Provincial Administration. Branch Community Services, 1994b).

According to Section 178(1) of the Interim Constitution, No. 200 of 1993 (South Africa, 1993a), municipalities would be provided with a reasonable allocation of funds from the respective Provincial Administrations. Financial assistance was accepted and claimed for by various communities, but this did not materialise at that stage (*Die Burger*, 1993b; 1994;1995a;1995b; 1995c).

This situation contributed to unhappy communities, as arrears were still reflected on the municipal accounts, which hampered a positive approach towards the payment of services rendered and ultimately contributed to non-payment (*Die Burger*, 1993a; 1996; *Die Tyger Burger*, 1995).

#### 1.1.3. Local Government

Although the situation of non-payment can be directly linked to the actions of national and provincial government, the following local government issues contributed to the situation:

- Transition; and
- Postal delivery.

##### 1.1.3.1. Transition

After the moratorium decision, transitional councils were established in terms of Section 12 of the Local Government: Transitional Act, No. 21 of 1993(South Africa, 1993c), up to the first local government elections in May 1996. In this transitional phase the focus was on new and future municipal accounts.

After the elections in May 1996 once again the focus was on new and future debt, with special arrangements for debt during the period 2 January 1994–30 June 1996(Western Cape (South Africa). Provincial Administration, 1994); and, once again, this almost terminated the collection of arrears during the transitional phase and as such, contributed to non-payment.

Although the majority of local authorities adopted collection policies during this phase, many disadvantaged communities were continuously granted extensions to not pay arrear debt as at 1 July 1996, which impacted negatively on the collection of outstanding arrears.

#### 1.1.3.2. Postal delivery

Also during this period many difficulties were experienced with the delivery of municipal accounts due to insufficient address data and street numbers in township areas and informal settlements; in many instances accounts were never delivered and communities therefore refused to pay for services. This negative situation again contributed to a situation of non-payment (*Die Burger*, 1995c; 1995d).

To address this situation of arrears and non-payment, new legislation was adopted and a new legislative framework developed (see Chapter 3) which provided assistance to local authorities for, amongst other issues, the collection of outstanding monies. The new legislative framework was also influenced and strengthened through the adoption of national and international best practices (see Chapter 2).

## 1.2. CURRENT SOUTH AFRICAN MUNICIPAL DEBT SITUATION

During the five-year cycle from the 2008/2009 to 2013/2014 financial years, South African municipal debt increased by 88%, from R50 billion to R94 billion (South Africa. National Treasury, 2014).

An analysis of the debts at 30 June 2014 per type of municipality shows:

- Metropolitan municipalities (Category A): 55% of total debt;
- Secondary cities/emerging metropolitan municipalities (Category B): 21% of total debt;
- Other remaining district and local municipalities (Category B and C): 24% of total debt;
- 79% of debt – 90 days and older; and



- Less than 3% debt written off.

Debt outstanding per type of service reveals:

- Water – 28%;
- Electricity – 24%;
- Property Rates – 21%;
- Sanitation – 7%;
- Refuse Removal – 7%; and
- Other – 23%.

Analysis of debt per type of debtor shows:

- Households – 56%;
- Business – 12%;
- Government – 5%; and
- Other – 27%.

Municipalities' failure to collect money owed to them means that service delivery is severely compromised: collection of debt should be 100%. Clearly, an increase of municipal debt of 88% over five years cannot be seen as positive, effective or efficient.

### 1.3. BACKGROUND TO THE STUDY

As can be seen above, the current state of debt management, credit control and effective collection of monies due and payable is in a very poor state in the current local authority environment (SALGA, 2010: 11).

Not collecting debt effectively and efficiently links directly to poor service delivery, as many local authorities lack the cash needed to maintain existing infrastructure or to fund the capital cost of new infrastructure. The media did from time to time highlight the actions and protests of unhappy consumers and citizens due to poor service delivery, highlighting the poor state of collection.

From a legislative perspective all municipalities need to ensure that an effective collection mechanism exists and that municipalities implement standing policies, by-laws, processes, procedures and systems in this regard. However, many municipalities are failing in their quest

for effective collection or lack the capacity to utilise enabling legislation to implement an effective and efficient debt-collection framework.

Ultimately a situation of growing debt and deteriorating municipal infrastructure will impact seriously on the relevant local authorities' and the country's economic growth and ability to compete internationally, including on the African continent.

#### 1.4. PROBLEM STATEMENT

Municipalities need to ensure that efficient systems, processes and procedures are implemented and supported by a framework of legislative compliance. But for many years South African local government municipalities have had difficulty in collecting outstanding debt, which undermines effective and efficient service delivery.

The non-collection of monies due and payable negatively affects the ability of a municipality to provide needed services to the particular community, meaning that the municipality will not be able to meet the constitutional requirement to provide services to all citizens. The worst-case scenario is that municipalities are at risk of “bankruptcy”, through the termination of operational and other services in a situation of constant non-collection of outstanding debt.

According to Section 25(1) of the Local Government: Municipal Systems Act, No.32 of 2000 (South Africa, 2000b) an Integrated Development Plan (IDP) must be created that “links, integrates and co-ordinates plans and takes into account proposals for the development of the municipality ... aligns the resources and capacity of the municipality” and “forms the policy framework and general basis on which annual budgets must be based”. In terms of Section 17(1)(a) of the Local Government: Municipal Finance Management Act, No.56 of 2003(South Africa, 2003) municipalities, amongst other requirements, must set realistic anticipated revenue for every revenue source as part of their annual budget.

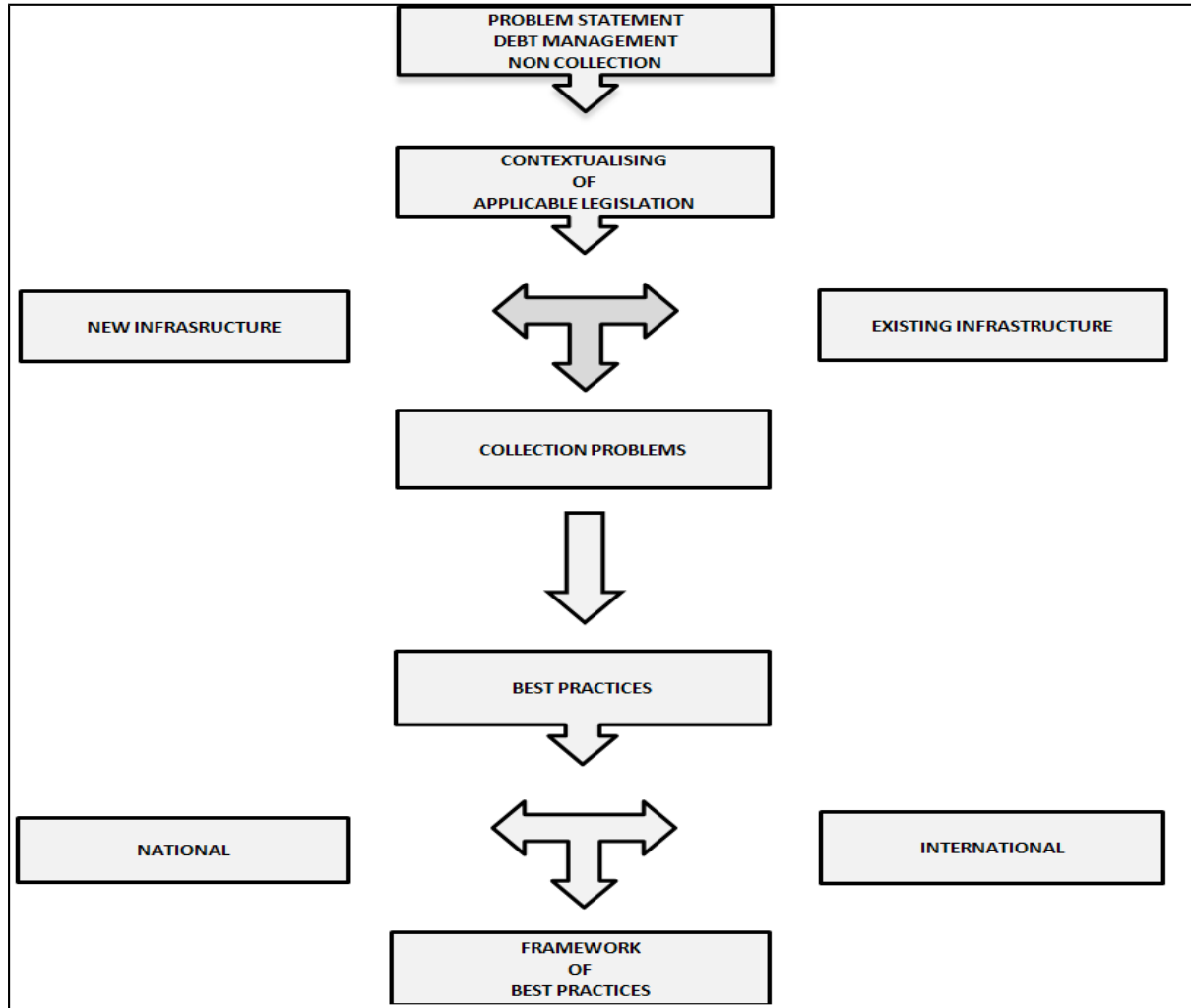
A poor collection rate will decrease “realistic anticipated revenue” and as such negatively impact on development per the IDP. Therefore the management of municipal debt is an issue of national importance.

#### 1.5.PURPOSE STATEMENT

The purpose of the research is to provide a framework (guidelines) to assist municipalities with debt management and the collection of outstanding monies. The framework will be based on national and international best practises within a constitutional and legislative context and background.

Therefore the research focused on identifying and documenting existing problems through the development of the proposed framework for effective cash and debt collection.

Figure 1.1 below details the approach followed in conducting the research:



**Figure 1.1: Research approach**  
Source: J Tesselaar (2013)

## 1.6. RESEARCH OBJECTIVES

The following primary and secondary objectives were formulated for this research to achieve the purpose statement:

### 1.6.1. Primary Objective

The primary objective was to determine the problems experienced by municipalities regarding their ability to collect outstanding monies due and payable. This includes categorising the identified problems into a priority order to ensure that problems categorised as ‘high priority’ will be addressed first.

### 1.6.2. Secondary Objectives

To achieve the primary objective the following secondary objectives were formulated: to

1. Review the constitutional and legislative framework;
2. Provide a theoretical analysis of best practices, from national and international perspectives;
3. Provide findings and analyses and formalise recommendations arising from the problems identified; and
4. Develop and propose a framework for municipalities to enhance debt collection.

### 1.7 ACTION RESEARCH

For the purpose of this study the Practical action research will be utilized, comprising of the following (Du Plooy-Cilliers, Davis and Bezuidenhout (2014:200)):

- This type of action research involves studying a local problem in which the researcher is directly involved;
- It requires the identification and implementation of a plan of action; and
- Reflecting on the action is important to make suggestions to further improve the situation.

### 1.8. SIGNIFICANCE OF THE STUDY

The percentage of cash collected and accounts paid directly link to the availability of funds for service delivery. Maximum cash collected could ensure optimum service delivery and/or enhancement.

All municipalities can benefit from the outcomes of the research by implementing best collection practices, including policies and by-laws. From a national perspective, the outcomes of the research could be vital in ensuring that the poorest of the poor benefit in terms of basic and other services.

### 1.9. OUTLINE OF CHAPTERS

The thesis consists of eight chapters, including this chapter. Table 1.1 summarises the layout of the thesis.

**Table 1.1: Chapter summary**

<b>Chapter</b>	<b>Chapter title</b>	<b>Chapter description</b>
<b>2</b>	Local and Global Perspective on Debt Management	Outcomes of literature review (excluding legislation)
<b>3</b>	Statutory and Legislative Framework	Outcomes of literature review (legislation)
<b>4</b>	Local Best Practices for Revenue	Outcomes of best practices research (local)

	Management and Collection of Debt	
<b>5</b>	Research Methodology and Design	Approach in terms of research, including design and methodology
<b>6</b>	Survey Results	Outcomes of survey (in Western Cape municipalities)
<b>7</b>	Analysis, Findings and Conclusion	Interpretation of survey and linking research
<b>8</b>	Debt Collection Guidelines and Framework	Final outcomes and recommendation

## CHAPTER 2

### LOCAL AND GLOBAL PERSPECTIVES ON DEBT MANAGEMENT

#### 2.1. INTRODUCTION

The literature search and review was conducted on the following areas as they relate to credit control and debt collection:

- South African government approach;
- Local environment;
- Global environment; and
- Selected reported case studies (international and local).

#### 2.2. SOUTH AFRICAN GOVERNMENT

The principles of credit control and debt collection are applied on a daily basis within all spheres of government. However, the focus will be on local government which serves as the locus for this research study.

##### **2.2.1. Revenue Management**

Dreyer (2011) argued that to ensure an effective collection of outstanding monies, municipalities need to ensure an effective and efficient revenue management approach which must include the following steps:

- Meter installation;
- Data management;
- Meter readings;
- Billing;
- Receipt management;
- Credit control;
- Debt management;
- Indigent management;
- Customer care; and
- Service departments.

The researcher is in agreement with the view as provided by Dreyer (2011) – these aspects are practically and will contribute to an enhanced debt collection environment.

#### 2.2.1.1. Meter installation

The information regarding the installation of meters must be captured on the municipal financial system as soon as possible, to ensure timely delivery of municipal accounts. Most municipal customers operate on a monthly budget and may not be able to pay accounts for longer periods.

#### 2.2.1.2. Data management

The meter information is merely one aspect of the data that needs to be captured on the financial system. Municipalities also need to ensure the capturing of personal and communication information. It is important to ensure that the data for the correct owner or responsible person is captured and linked to services consumed. Communication information and preference of communication needs to be captured to ensure effective communication and delivery of municipal accounts. Overall it is important that all information regarding the property and its connected services be captured to ensure that the consumer/customer will be responsible for all services rendered.

#### 2.2.1.3. Meter readings

Meter readings form the basis of the service account and municipalities need to ensure that meter readings are captured on time (i.e. on a monthly basis) to ensure consistency. Municipalities also need to ensure that meter readings are accurate; if estimated, the estimation must be calculated correctly; and that estimations for a particular meter will not be made for longer than three months. Municipalities need to ensure that meter reading systems cater for deviation reports based on set parameters, and that all deviations outside these parameters be investigated and rectified before billing.

#### 2.2.1.4. Billing

Billing needs to be finalised on a monthly basis, based on accurate monthly cycles. Municipalities need to ensure that all services consumed are billed. They need to take care to ensure that all levies are accurate and are issued in terms of approved tariffs. Generated accounts must be forwarded by the consumer's indicated choice of communication (post, fax, email or SMS) to the correct address or number. It is important that the source billing data

must be scrutinised to ensure accuracy to avoid detailing staff to correcting errors, rather than allocating more staff to the collection function, as most customers will pay their accounts if they receive accurate billings(Dreyer, 2011).

#### 2.2.1.5. Receipt management

Municipalities need to ensure that enough, effective and efficient payment facilities and pay points are available to enable customers to pay municipal accounts received via the billing system. If municipalities cannot provide enough internal pay points, third parties need to be contracted to provide this service. Municipalities need to cater for all means of payment, such as cash, cheque, electronic funds transfer, debit order or credit card. Under no circumstances must the non-availability of pay points and payment methods be the reason for non-payment.

#### 2.2.1.6. Credit control

Municipalities need to implement an effective credit control system to deal with high risk customers. One of the mechanisms in this regard will be to increase the service deposit. Municipalities need to ensure that they do not enter into business arrangements with providers owing outstanding municipal fees; alternatively, they can deduct the outstanding money from their payments to the service provider.

#### 2.2.1.7. Debt management

Municipalities also need to ensure the operation of an effective and efficient debt management collection process as part of an approved credit control and debt collection policy. It is of the utmost importance to ensure the effective and efficient collection of outstanding monies via this system.

#### 2.2.1.8. Indigent management

Inherent to the collection process, by means of the credit control and debt collection policy, is the need to ensure payment by those consumers that can afford to pay while providing indigent assistance to those that want to pay, but cannot afford to. Municipalities need to ensure the implementation of a reasonable, affordable and effective indigent policy. All approved indigent applications need to be re-evaluated on an annual basis.



#### 2.2.1.9. Customer care

Municipalities need to ensure that their billing, account delivery and credit control and debt collection actions be supported by an effective and efficient customer care infrastructure, such as enquiry offices, call centres, walk-in centres and back office assistance. Written communication, visits to offices and telephonic enquiries must be dealt with within a reasonable time period and in terms of relevant policies.

#### 2.2.1.10. Services departments

Revenue management and debt collection is not only the responsibility of the finance department, but the entire municipality. Service departments need to contribute to effective collection by ensuring assisting in this regard.

### 2.3. LOCAL ENVIRONMENT

The following principles provide a framework for best practices when considering solutions to identified problems:

- Public revenue;
- Public benefits;
- Public change (financial management);
- Public participation;
- Non-payment users;
- Non-payment problems;
- Financial performance;
- Financial risk;
- Financial reporting; and
- New approach.

#### **2.3.1. Public Revenue**

Gildenhuys (2008:214–219, 573) argues that governments, including municipalities, need to collect taxes to pay for the collective services rendered on behalf of the citizens or

communities served. Taxation, therefore, means the collection of revenue to ensure payment for services rendered on behalf of a community.

The relevant authority will use taxation as the basis for levying and collecting revenue. The function of taxation (revenue) will be as follows:

- Revenue collection;
- Redistribution of wealth;
- Economic growth; and
- Cost of developing infrastructure.

The platform provided by Gildenhuis (2008) provides the basis for a sound debt collection process and system.

#### 2.3.1.1. Revenue

The basic principle of taxation is to collect revenue to finance costs and expenditure incurred on behalf of the citizens or community served.

#### 2.3.1.2. Redistribution of wealth

From a taxation perspective, it is important to ensure a balance between ratepayers that can afford to pay for services versus those in need of services, but cannot pay. Municipalities therefore need to collect more from those that can afford to subsidise those that cannot afford. The sum total of redistribution of wealth will be the equivalent of the additional revenue collected from those that can afford to pay.

#### 2.3.1.3. Economic growth

Economic growth, including compensation for items such as unemployment and inflation, needs to be included as part of costs and expenditure to ensure economic stability and development.

#### 2.3.1.4. Cost of developing infrastructure

Authorities, including municipalities, generate capital to finance infrastructural projects by means of bonds and loans, as the normal operating budget cannot always fund these types of projects. The cost (capital and interest) of these types of funding must be included as part of costs and expenditure to ensure economic credibility.

### **2.3.2. Public Benefits**

Pauw *et al.* (2009:15–39) support the approach adopted by Gildenhuis (2008) by stating that the collection of public revenue is in principle to provide public benefits (goods, services and investments) to the community. The key concepts from a public benefit perspective are:

- Ownership;
- Welfare;
- Measuring;
- Accountability;
- Legislation.

Although the researcher is in agreement with Pauw *et al.* (2009), the focus on “welfare” should not be too prominent as the focus should first be on service delivery.

#### 2.3.2.1. Ownership

Municipalities collect public money on behalf of the public and therefore the public owns the money. The money must therefore be utilised to the benefit of the public.

#### 2.3.2.2. Welfare

The spending or utilisation of the public money for public goods and services must contribute to the welfare of the public and be utilised to the advantage of the public it serves.

#### 2.3.2.3. Measuring

Effective measuring will ensure effective utilisation of public money to ensure value for money in the form of goods and services. Municipalities must ensure that public objectives materialise and contribute to effective and efficient service delivery.

#### 2.3.2.4. Accountability

Municipalities must be responsible for delivering public goods and services and be held accountable for the management of public money.

#### 2.3.2.5. Legislation

New legislation will give effect to the collection of public money and the collection of revenue on behalf of the public for public goods and services. An important part of the

concept ‘give effect to’ is to ensure effective collection of public money and the implementation of effective measures to collect outstanding money.

### **2.3.3. Public Change (Financial Management)**

Van der Walt and Du Toit (2008:301–305) argue for the importance of financial management in an environment of constant change using the following key indicators:

- Scarcity;
- Optimisation;
- Financial responsibility;
- Financial Systems; and
- Financial reporting.

The researcher is in agreement with the arguments provided by Van der Walt and Du Toit (2008) – more focus should however be given to ‘Reporting’ as good reporting provides information to determine if the debt collection strategy is successful or need to be changed

#### 2.3.3.1. Scarcity

Municipalities must realise that available resources are scarce and limited whilst public needs and wants are unlimited. Constant change will affect the scenario regarding needs and wants and as such, it is important to ensure effective and efficient collection and managing of financial resources.

#### 2.3.3.2. Optimisation

Flowing from a scarcity point of view, Van der Walt and Du Toit (2008) further argue that municipalities need to ensure the optimum usage of resources to ensure best value for money and effective and efficient service delivery. Municipalities need to minimise wastage and incorrect use of financial resources. Effective collection of income will ensure the maximum available funding pool.

#### 2.3.3.3. Financial responsibility

Ensuring minimum wastage and optimising the use of available funds needs financial responsibility from the financial officials responsible for collecting and spending public

revenue. Punitive measures regarding any non-effective collection and spending of revenue are therefore important to ensure effective assessment of these responsibilities.

#### 2.3.3.4. Financial systems

Effective systems will give effect to the concept of best value for money, effective and efficient service delivery and optimising the usage of available resources.

#### 2.3.3.5. Financial reporting

The public needs to ensure that municipalities report regularly as to the collection and utilisation of revenue. Municipal officials are responsible for ineffective management of public revenue.

### **2.3.4. Public Participation**

The public will determine revenue levied (taxation) by means of public participation. When financing needs and wants via taxation, the public (citizens) first needs to determine what these needs and wants are. Bekker (1997:11–74) argues the following are key elements for public participation:

- Democracy;
- Representation; and
- Majority.

Full agreement with the views of Bekker (1997).

#### 2.3.4.1. Democracy

The principle of ‘the people must govern’ forms the cornerstone of democracy when considering the amount of revenue needed to finance the needs and wants of society.

#### 2.3.4.2. Representation

It is not practically possible to allow every single member of the public to use their democratic right to directly influencing decision-making. Representative democracy allows community members to represent others. From a financial perspective the chosen representatives will decide on behalf of the others when the amount and basis of revenue is determined.

#### 2.3.4.3. Majority

In a system of representative democracy, the majority of public members will determine the revenue and spending framework (budget).

#### **2.3.5. Non-Payment Issues**

Non-payment or withholding of payment will ultimately cause a shortage of cash for municipalities (Delpont, 1997:31). Without cash or a positive cash flow, municipalities cannot provide effective and efficient services. The following aspects should be considered when evaluating the problem of non-payment:

- Unemployment;
- Infrastructure;
- Capital investment;
- Contractual responsibilities;
- Service delivery;
- Economic development;
- Maintaining existing infrastructure; and
- Housing.

The views provided is of the utmost value and in particular the following 2(two) arguments provided by Delpont (1997), namely that poor collection impact negative on service delivery and will cause a cash shortage

##### 2.3.5.1. Unemployment

The provision of new posts will link directly to the availability of funds. A situation of non-payment therefore cannot contribute to providing new employment and will not support a national government request for providing additional employment. In a worst case scenario, in a situation of continuous non-payment existing employment in the local government sphere might be at risk of employment loss or reduction (Selepe, 1997:5).

#### 2.3.5.2. Infrastructure

Non-payment will not provide sufficient cash resources to pay for the depreciation (previously referred to as interest and redemption) component of new capital infrastructure. This situation negatively impacts on those members of communities willing to pay or paying for municipal services rendered. Hoffman (2010:7) argued that ratepayers do have rights to withhold payment in situations where municipalities are unable to provide effective and efficient services.

#### 2.3.5.3. Capital investment

Pieterse (1997:18) argues that non-payment also negatively affects the credit rating (as awarded by private credit rating agencies) of a municipality and is the most important indicator when capital markets consider investing in the local government sphere. A bad credit rating will not attract capital investment, or will attract at an investment premium (Pieterse, 1997:18).

#### 2.3.5.4. Contractual responsibilities

In a typical non-payment environment, lack of cash might affect negatively on the ability of municipalities to pay creditors. Silke (1997:39) highlights that the non-payment of creditors will ultimately lead to insolvent local authorities.

#### 2.3.5.5. Service delivery

Delpont (1997:31) indicates that non-payment will force municipalities to cut operating budgets as per the Municipal Finance Management Act, No. 56 of 2003 (MFMA) and will not support an effective and efficient service delivery. A total collapse of services will be disastrous for effected communities.

#### 2.3.5.6. Economic development

Municipalities must fulfil their obligation to provide development opportunities for, amongst others, previously disadvantaged communities and the poorest of the poor. Without cash-related resources municipalities will not be able to fulfil this obligation.

#### 2.3.5.7. Maintaining existing infrastructure

To be able to maintain existing infrastructure, municipalities will need resources such as labour and material. Without the availability of the necessary cash resources, municipalities

will not be able to maintain as needed. No maintenance will ultimately contribute to the loss or non-availability of infrastructure.

#### 2.3.5.8. Housing

The housing need in South Africa is of such a nature that the existing contribution of new houses is not enough (Silke, 1997:31). Although the provision of houses is mandated as national and provincial functions, municipalities can contribute to housing provision by means of an unfunded mandate. Municipalities must therefore ensure that enough cash is available to assist with the facilitation and provision of new houses (Silke, 1997:31).

#### **2.3.6. Non-Payment Problems**

Non-payment not only contributes to less available revenue, but also contributes negatively to the following social problems:

- Poverty;
- Unemployment;
- Indigence;
- Inability to generate income;
- Crime;
- Illiteracy; and
- Education.

The arguments and views highlighted in this paragraph supports the arguments as per paragraph 2.3.5 – the theme remains the same, namely that poor debt collection impacts negative (directly) on service delivery.

##### 2.3.6.1. Poverty

Poverty is usually one of the biggest challenges facing any community. Municipalities are responsible for ensuring an effective system of redistribution of wealth to alleviate poverty by means of indigent grants. Although the national tax basis should provide assistance in this regard, by means of the equitable share of revenue, such provision is seldom sufficient. In an environment of non-payment or non-collection, municipalities will not be able to assist with the alleviation of poverty (Sharpley, 2001:26). Sharpley (2001) argues that it is also the



responsibility of municipalities, and not only that of national government, to eliminate poverty. Badenhorst (2002:11) agrees with this argument. Municipalities are responsible for engaging the private sector in this regard.

#### 2.3.6.2. Unemployment

Municipalities need to ensure an environment of job creation and, where needed, to facilitate and contribute to the creation of jobs (Badenhorst, 2001:84). However, Wilhelm (2002:29) argues that municipalities need to ensure employment of all citizens to increase the revenue base. An increased revenue base will ensure enhanced service delivery. The non-payment or non-collection of funds will negatively affect job creation and will not curb unemployment.

#### 2.3.6.3. Indigence

Caring municipalities currently contribute to the public needs of the indigent by means of free services and houses to ensure an enhanced quality of life (Sternberg, 2001:31). Municipalities therefore need to ensure an effective collection of monies due (revenue) to be able to improve the life of the indigent.

#### 2.3.6.4. Inability to generate income

Many municipalities are unable to generate income for redistribution of wealth, because of the inability to collect monies due and payable. Collecting the owed income will facilitate the upliftment of the poorest of the poor to ensure a better future for all. A lack of revenue will negatively affect the ability of a municipality to generate income for this purpose (Rothman, 2001:2).

#### 2.3.6.5. Crime

Part of the revenue collected to fund public spending should be used to combat crime to ensure not only safer communities, and to facilitate an environment favourable for tourism (Theobald, 2001:38).

#### 2.3.6.6. Literacy

Singh (2001:46) argues that levels of literacy must increase to obtain better skills that will contribute to advanced literacy and revenue contribution. Municipalities need to contribute to ensure a better future for all citizens by means of increased literacy levels.

### 2.3.6.7. Education

An educated community and nation will eliminate many of the above problems. Although education is a national function, municipalities can contribute indirectly through special projects and interactions. A better-educated public will ultimately ensure enhanced economic activities and as such the ability to contribute more income for public service delivery (Ullman, 2002:10).

### **2.3.7. Financial Performance**

Public revenue is collected on behalf of the public and used for public needs and wants. Therefore a system, or framework, of financial performance must exist to ensure best value for money. Effective measuring will ensure both best value for money and effective and efficient service delivery. Important in this regard are:

- Inputs and outputs; and
- Service quality.

Van der Walt (2004) uses the term “service quality” that can be linked to poor service delivery whilst poor service is mostly the end product of poor debt collection.

#### 2.3.7.1. Inputs and outputs

An effective system of financial performance management will favourably influence the relationship between outputs by means of reduction of inputs or reduction in cost. The general principle of ‘doing more with less’ is applicable, meaning less revenue is needed for service delivery (Van der Walt, 2004:111).

#### 2.3.7.2. Service quality

In an environment of effective performance management, system mechanisms will ensure a high quality of service delivery, as poor quality will be determined at the early stages. Performance criteria applied on a uniform basis by all municipalities will result in an improvement. Good quality will, over time, require less maintenance and ultimately contribute in less revenue needed to sustain services (Van der Walt, 2004:115).

### **2.3.8. Financial Risk**

Municipalities need to analyse financial risks to safeguard public funds for service delivery. The following elements of risk are important:

- Practice; and
- Monitoring.

Taleb (2007) highlights the focus on monitoring within the risk environment – many municipalities lack the ability to monitor effectively to recognise poor debt collection.

#### 2.3.8.1. Practice

Taleb (2007:27) states that managing risk is a practical science and not a ‘spectator’ science. It is, therefore, important that municipalities plan for the unexpected and prepare for worst-case scenarios.

#### 2.3.8.2. Monitoring

Taleb (2007:96) states that it is important that municipalities constantly monitor identified risks to act effectively when these identified risks materialise.

### **2.3.9. Financial Reporting**

Municipalities need to compile financial statements annually. These financial statements will be the proof and evidence of the way in which a particular municipality utilised collected revenue. The following two important areas need highlighting:

- Financial officials; and
- Format.

The format as prescribed by National Treasury is too complicated and not supporting a positive environment for debt collection

#### 2.3.9.1. Financial officials

Legislation determines the competency levels of financial officials by means of regulations, which help to ensure the proper utilisation, management and recording of public funds (South Africa. National Treasury, 2007:8).

#### 2.3.9.2. Format

For the purpose of standardisation, the National Treasury and the Accounting Standards Board prescribe the format and content of financial statements to assist the public with interpretation. This function was previously performed by the IMFO (IMFO, 2009).

### **2.3.10. New Approaches**

Fourie (2001) states that South Africa is experiencing a continuous process of transformation wherein the environments within which municipalities have to operate have undergone revolutionary changes. According to Fourie (2001) one of the areas in which municipalities are experiencing great difficulties is the growing outstanding debt that is threatening the very existence of municipalities. Fourie (2001) highlighted the following key areas:

- Macro control measures;
- Policy; and
- Consolidated approach.

Fourie (2001) highlights 2(two) critical ingredients for successful debt collection, namely policy and consolidation of debt – the researcher is of the opinion that many municipalities battle with effective debt collection due to policy shortages – policy must not be a copy and paste exercise, but a policy that enhances the needs to the particular municipality.

#### **2.3.10.1 Macro control measures**

This chapter places a high premium on municipalities to deliver essential public goods and services to communities in an effective, efficient, responsive, equitable and optimal way. Municipalities are charged with many new ideas and concepts and need to ensure that policies are based on the new legislative framework in which human rights have superseded apartheid principles and policies. According to Fourie (2001) the only way to succeed is a transformation of attitude and ideas within credit control and debt collection systems.

#### **2.3.10.2. Policy**

According to Fourie (2001) a few simple key principles underpin the successful operationalisation of an effective credit control and debt collection policy, namely, the co-operation of all communities; debtors need to undertake to pay back outstanding debt; arrangements and current commitments must be enforced; and council has the right to legal collection and legal action.

#### **2.3.10.3. Consolidated approach**

According to Fourie (2001) in the United States of America it was realised that the key to optimum public goods and services was based on results-oriented government, where

outcomes and not inputs were funded. Similarly, in the South African context the credit control and debt collection policy needs to be performance managed. It is therefore important that all aspects of credit control and debt management should be consolidated to make performance possible and to promote good payment habits amongst citizens. Fourie (2001) concluded that if the debt collection wheel needs to be re-designed it should be jet driven and not ox driven; meaning a new approach to debt collection should be developed.

## 2.4. GLOBAL ENVIRONMENT

This section presents an overview of international focus areas for best practice, and a discussion of the various approaches adopted in Asia, Europe, Africa and North America.

### 2.4.1. International Perspective – Europe

The following are some of the latest approaches to debt collection in Europe:

- Cash based;
- Name-and-shame;
- Network; and
- Register rights.

Cash backed as per the French model will not be achievable due to low cash resources of municipalities in South Africa

#### 2.4.1.1. Cash based

The French local government system is based on a cash basis, meaning cash collected in one year will be utilised in the next financial year. This means that the French local government operates on a cash basis with no debtor/bad debt consideration in year of spending (INCA, 2006).

#### 2.4.1.2. Name-and-shame

The government of Spain utilises the principle of name-and-shame by publishing or providing information of non-payers to the public (Spanish Vida, 2010).

#### 2.4.1.3. Network

In Scotland, the principle of networking is important as the Scottish government network attempts to share information on non-payers as a means of acting against these non-payers (Alastair, 2007).

#### 2.4.1.4. Register rights

The new European approach is to register outstanding debt collection against the property to effectively block the owner from transferring said property before addressing payment of outstanding debt (Articlebase, 2010).

### **2.4.2. International Perspective – Asia**

Brown (2009) recorded the following approaches that contributed to affective debt collection in the Asian environment:

- Behaviour categories versus action specific;
- Best suited collection action for customer;
- Call at right time;
- Allocate the right official and action to the customer; and
- Consolidated central account versus decentralised account.

Good initiatives that can support the South African Debt Collection environment

#### 2.4.2.1. Behaviour categories versus action specific

Instead of treating all customers the same, the Asian model is based on a particular client, meaning action is based on credibility and payment history.

#### 2.4.2.2. Best suited collection action for customer

As per the previous paragraph, this means that different actions for different customers are practiced.

#### 2.4.2.3. Call-at-right-time

The Asian call centre environment attempts to call the customer at the right time to ensure optimum collection.

#### 2.4.2.4. Allocate the right official and action to the customer

Difficult customers are allocated to more experienced staff to promote more effective debt collection.

#### 2.4.2.5. Consolidated central account versus decentralised account

One consolidated account is a more effective way of recording debt than recording various separate accounts.

### **2.4.3. International Perspective – Africa**

As South Africa is part of the African continent, to an extent the South African situation reflects to the African approach. The method detailed below seems to be effective in many African countries.

Face to face collection seems to be very successful – many suburbs and towns are however too dangerous to collection agents to perform such debt collection initiative

#### 2.4.3.1. Face-to-face

Face-to-face collection in this context means the visiting of the debtor or non-payer by means of a home visit (Cape Town, 2010).

### **2.4.4. International Perspective – United States of America**

According to the US Treasury Department (1999) the following key principles need consideration in any federal or governmental situation:

- Offset within government;
- Asset sales versus rescue; and
- Write-off.

#### 2.4.4.1. Offset within government

Payments towards one government institution, or deductions by one government institution of outstanding debt will be offset against one another, to ensure a holistic approach towards debt collection.

#### 2.4.4.2. Asset sales versus rescue

When a debtor is in financial difficulty an analysis is performed to determine the viability of supporting the particular customer for rescue purposes or rather selling the asset as settlement of debt.

#### 2.4.4.3. Write-off

The US environment is write-off friendly where the collection of outstanding debt is always evaluated against cost-effective collection.

### 2.5. SELECTED RESEARCH CASE STUDIES

A variety of action research case studies have been conducted; some of the more applicable case studies are presented, namely:

- Back office;
- Debt collection techniques;
- Processes;
- Client challenge;
- Automation; and
- SMS notification.

All case studies are practical and will contribute to an enhance debt collection environment, particular the utilisation of technology

#### **2.5.1. Back Office**

A research case study was undertaken on Baycorp (2010) to determine the level of communication with potential credit control and debt collection customers, as well as the level of education needed to be a debt collector. The case study concluded that a debt collector at least needs to be able to speak well, understand English, has experience operating a telephone and has attained a minimum level of education. It was also clear from the case study that Baycorp's electronic interaction and website covered all the questions and answers needed for a potential arrears debtor to determine what will happen next. This case study is significant because it shows that well-trained and -equipped staff providing administrative



and office support to the debt collection process will enhance the process and will contribute to effective and efficient debt collection.

### **2.5.2. Debt Collection Techniques**

The most popular call centre magazine in the United Kingdom, The Callcentrehelper.com (2010) published a case study on the use of speech analytics in debt collection. It revealed a speech analytics programme will analyse the speech of both debtor and collector to identify opportunities and risk. Using proprietary software, such programmes can deliver excellent results even in large-scale organisations. The software can also assist in identifying operators in need of training, thereby ensuring early recognition of training needs. The finding was that more cash would be collected, ensuring more effective collection of outstanding monies.

### **2.5.3. Processes**

In 2006, Science Direct compiled a case study on processes based on the use of rule-based decisions (Science Direct, 2006). It assessed the plethora of issues related to rule-based decision engine technology, in particular the rules in complex and dynamic organisational processes. Rule-based engines can be implemented effectively for good decision making, even in environments consisting of large volumes of volatile data. The case also argued for the necessity of successful integration of such rule-based technology for effective management, improved information quality and superior decision making.

### **2.5.4. Client Challenge**

Oakley (2010) describes how the company, Anglia Water, had experience many challenges and decided to change their debt management focus to the following:

- Reduce cost by automating processes;
- Improve the productivity and effectiveness of its call centre; and
- Enhance its ability to monitor and change its debt collection strategies.

By implementing the above, Oakley (2010:3) recorded the following success stories:

*A reduction in the number of manual interventions needed to complete routine business processes so that, for instance, a confirmation letter is automatically generated and sent out when a payment plan is agreed with a customer;*

*The provision of fail-safe functionality through more frequent updates which means that, for example, if a collection action against a customer is already in progress, the contact centre is prevented from agreeing a payment schedule with the same customer;*

*Improvements to the auto-dialer process through daily updates to the call list by the Tallyman system, preventing debt collection calls to customers who have made payments within the previous few days; and access to the Tallyman system for call centre agents, enabling them to see past debt-recovery actions that have been taken for a customer;*

*The ability to categorize customers for targeted collection campaigns, and the facility to tailor standard letters;*

*More powerful, easier-to-use management reporting, that enables Anglian Water to monitor its debt collection strategies more effectively; and*

*Improvements in customer demographic and account progress tracking information.*

### **2.5.5. Automation**

The Experian Decision Analyst (2011) refers to Welsh Water, which decided to introduce a comprehensive new debt recovery and revenue management system. Its major requirements were to automate as many routine activities as possible, and to ensure that customers could be segmented so that different approaches could be adopted.

The benefits from the case study were:

- Collection rates significantly increased;
- Debt collection costs fell well below the industry average;
- Has significantly increased the productivity of the collections team;
- Customers segmented into a variety of categories to enable the most effective course of action to be taken; and
- Has significantly enhanced the range of customer payment arrangements Welsh Water can offer – there are now a whole library of letters and forms available to cater for and respond to individual customer requirements.

### **2.5.6. SMS Notification**

Datasquirt (2011) details how one of the UK's largest municipal councils, which manages thousands of properties throughout the city, and continually faces the challenge of collecting overdue rent from council housing tenants, decided to implement a contact SMS solution. Previously the process for collecting late payments was cumbersome and costly: agents would call, write letters or arrange home visit collections. The SMS solution offered an easy way to contact all tenants in arrears and request that they call the Housing Department to arrange a payment schedule.

The solution provided for the following outcomes:

- Improved debt collection: 42% of council housing tenants responded to SMS to schedule payments;
- Reduced costs: CONTACT SMS is an estimated 50% less costly per contact; and
- More effective, non-confrontational communication: SMS broadcasts are easily managed and are better received by end-users.

## **CHAPTER 3**

### **STATUTORY AND LEGISLATIVE FRAMEWORK**

#### **3.1. INTRODUCTION**

Since 1994, South Africa has adopted new legislation to give effect to the new democracy. For local government, this started in March 1998 with the enactment of the White Paper on Local Government (South Africa, 1998e), which resulted in the promulgation of a suite of new local government legislation aimed at transforming local government. The effect of this new legislation has been to change the debt management environment within the local government sphere, i.e. in municipalities.

This chapter seeks to determine, from a legislative perspective, the methods by which municipalities may collect money due and payable. The key perspectives on the statutory and legislative framework and compliance are:

- National legislation;
- Provincial legislation, including ordinances;
- Policies and by-laws;
- Judgments;
- Common law; and
- Other sources.

Within the South African context a statutory hierarchy of precedence prevails when considering the implications of any legal action. This hierarchy is referred to by magistrates and judges (Jurisdiction of South African Courts and Tribunals, 2011) and it is also necessary that the municipal officials involved with debt collection should be aware of it and apply it accordingly:

- Statutory law – Constitution Act, 1996;
- Statutory law – National Acts;
- Statutory law – Provincial Acts;
- Statutory law – Municipal By-Laws;
- Policies;
- Judgments – Constitutional Court;
- Judgments – Supreme Court of Appeal;
- Judgments – High Court;
- Common law; and
- Text books.

The following outcomes Sections highlights that in principle the responding municipalities are struggling to comply with and/or utilising the legislative framework:

- Section 6.2 Municipal Legislative General;
- Section 6.3 Municipal Legislative Statutory Compliance; and
- Section 6.4 Municipal Legislative Judgments.

Where necessary and applicable legislation will be quoted in the original format for interpretation purposes.

### 3.2. STATUTORY LEGISLATION

Various pieces of statutory legislation impact on the levying and collection of outstanding monies. Section 3.2 below discusses municipal-related legislation that impacts directly on the operational activities of municipalities with regard to revenue and debt collection. Non-municipal Acts which nevertheless impact on the collection of outstanding monies are also presented: only those aspects that influence the credit control and debt collection process/policy are discussed.

Table 3.1 provides a list of the relevant national legislation, which is discussed further in Sections 6.3 and 8.3.1. The weighting highlights the importance of the various pieces of legislation. The weighting was assigned by the researcher on the basis of importance from a credit control and debt collection perspective, from 100 (least important) to 500 (critical) based on his 30 years of experience in and knowledge of local government finance and municipal debt collection.

**Table 3.1: Legislation governing debt management**

<b>Legislation</b>	<b>Weighting</b>
Local Government: Municipal Systems Act, No. 32 of 2000	500
The Constitution of the Republic of South Africa	400
Local Government: Municipal Property Rates Act, No. 6 of 2004	400
Local Government: Municipal Finance Management Act, No. 56 of 2003	400
National Credit Act, No. 34 of 2005	300
Consumer Protection Act, No. 68 of 2008	300
Magistrate Court Act, No. 32 of 1944	300
Prescription Act, No. 68 of 1969	300
Insolvency Act, No. 24 of 1936	300
Local Government: Municipal Structures Act, No. 117 of 1998	200
Electricity Regulations Act, No. 4 of 2006	200
Promotion of Access to Information Act, No. 2 of 2000	200
Promotion of Administrative Justice Act, No. 3 of 2000	200
The White Paper on Local Government, 1998	200

Water Services Act, No. 108 of 1997	200
Interpretation Act, No. 23 of 2005	200
Companies Act, No. 71 of 2008	200
Children's Act, No. 38 of 2005	100
Close Corporation Act, No. 69 of 1984	100
Communal Rights Act, No. 11 of 2004	100
Deeds Registry Act, No. 47 of 1937	100
Disaster Management Act, No. 57 of 2002	100
Electronic Communications and Transactions Act, No. 25 of 2002	100
Income Tax Act, No. 58 of 1962	100
Institution of Legal Proceedings against Certain Organs of the State Act, No. 40 of 2002	100
Land Assistance Act, No. 126 of 1993	100
Local Government: Municipal Demarcation Act, No. 27 of 1998	100
Local Government: Municipal Electoral Act, No. 27 of 2000	100
Marriage Act, No. 25 of 1961	100
Matrimonial Property Act, No. 8 of 1984	100
Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, No. 19 of 1998	100
Restitution of Land Rights Act, No. 22 of 1984	100
Sectional Titles Act, No. 95 of 1986	100
Share Block Control Act, No. 59 of 1980	100
Supreme Court Act, No. 59 of 1959	100
Trust Property Control Act, No. 57 of 1988	100

Source: J Tesselaaar (2013)

### **3.2.1. Local Government: Municipal Systems Act, No. 32 of 2000**

Section 74 of the Local Government: Municipal Systems Act, No. 32 of 2000(South Africa, 2000b) states that municipalities are required to implement a Tariff Policy with regard to all services rendered. Municipalities must give effect to this Tariff Policy and enforce it by means of a tariff by-law, as per Section 75 of this Act.

From the perspective of revenue and collection of outstanding monies, Chapter 9 regulates the credit control and debt collection of a municipality. The provisions contained in Chapter 9 require that, in addition to levying rates and providing services, municipalities must also provide for the following financial and administrative capacity:

- The establishment of a sound customer management system that creates a positive and reliable relationship between service provider (municipality or other service provider) and service receiver (customer or citizen) (Section 95(a));
- The establishment of a mechanism for the customer or citizen to provide feedback regarding services rendered (Section 95(b));
- The provision of information as to the cost of services and utilisation of monies collected (Section 95(c));
- Ensuring that the measuring of services are accurate by utilising verifiable metering systems (Section 95(d));
- Ensuring delivery of accurate accounts to customers. The basis for calculation must be reflected on the relevant account (Section 95(e));
- Provision of a mechanism to allow enquiries regarding metered consumption, including an appeal mechanism (Section 95(f));
- Provision of an accessible complaints and enquiry mechanism for all types of customers (Section 95(g));
- Provision of a mechanism to monitor response times and effectiveness of dealing with complaints and enquiries (Section 95(h)); and
- Provision of accessible pay points to allow customers to settle accounts or get access to pre-payment services (Section 95(i)).

Section 96 of the Systems Act, 2000 states that municipalities are responsible for the collection of outstanding monies and they need to adopt, maintain and implement a debt collection policy. Further, Section 96(b) states that the debt collection policy must be consistent with the rates and tariff policy.

Section 97 outlines the provisions required in the policy, including:

- Credit control procedures and mechanism (Section 97(a));
  - Debt collection procedures and mechanisms (Section 97(b));
  - Provision for indigent debtors that is consistent with rates and tariff policy (Section 97(c));
  - Setting realistic targets in terms of recognised accounting practises and collection ratios, and having an acceptable provision in the estimates of income for bad debt (Section 97(d)(i) and (ii));
  - Interest on arrears (Section 97(e));
  - Extension of time for payment (Section 97(f));
  - Restriction or termination of services when in arrears (Section 97(g));
  - Matters of unauthorised consumption of services, theft and damages (Section 97(h));
- and

- Any other matter as prescribed by the relevant minister as per Section 104 (Section 97(i)).

The Act also provides for supervisory and implementing authorities:

- The executive mayor, executive committee, council or an appointed committee (supervisory authority) need to oversee, monitor, evaluate, and review the required policy (Section 99); and
- The municipal manager or a service provider (implementing authority) must ensure implementation and enforcement of policy (Section 100(a)). The implementing authority must also ensure effective administrative mechanisms, processes and procedures to ensure collection of outstanding and levied monies (Section 100(b)). The responsibility is on the implementing authority to meet with the supervisory authority on the policy and related issues (Section 100(c)).

Section 102 of the Act provides various mechanisms and options to municipalities regarding the collection of outstanding monies, namely:

- Consolidation of any separate accounts of a person liable for payments to the municipality (Section 102(1)(a));
- Credit payment against any account of a person (Section 102(1)(b));
- Implement any debt collection and credit control measures provided for in the Act (Section 102(1)(c));
- Subsection 1 will not apply in the case of a dispute (Section 102(2)); and
- A municipality must provide the owner of a property with copies of accounts sent to the occupier for municipal services provide, if the owner request such accounts in writing (Section 102(3)).

Section 118 deals with clearance certificates and the transfer of property. The property is the guarantee to the municipality in terms of outstanding debt.

The Act also provides mechanisms to strengthen the capacity of municipalities in their process of collecting outstanding monies, by providing the municipality the right to access property for installation, inspection and repairing purposes (Section 101); the municipality can also enter into agreements with the employer of a person owing money to the municipality, if the debtor provides consent to the deduction of the outstanding amounts (Section 103).



In terms of Schedule 1, Section 12A of the Systems Act, 2000(South Africa, 2000b) councillors must not be in arrears for longer than three months and in terms of Schedule 2, Section 10, staff must not be in arrears for a period of three months.

### **3.2.2. The Constitution of the Republic of South Africa, 1996**

Local government affairs are included in Chapter 7 of the Constitution, 1996 and in terms of Section 152(1) which states that the role of local government is to ensure the provision of services to communities in a sustainable manner. The services referred to in Section 152(1) are recorded in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution. Section 229 of the Constitution provides municipalities with the mandate to levy fees, including property rates, to fund the services detailed in Schedules 4 and 5 (South Africa, 1996).

### **3.2.3. Local Government: Municipal Property Rates Act, No. 6 of 2004**

The Local Government: Property Rates Act, No. 6 of 2004(South Africa, 2004b) provides two important necessities for the collection of monies from a revenue and debt collection perspective: the power to levy rates (in terms of Section 2) and the adoption of the rates policy (in terms of Section 3).

The rates policy must support the collection of property rates as documented in terms of the credit control and debt collection policy, and must be consistent with these policies, with regard to indigent debtors (Section 97(c)), and for the levying and collecting of all property rates and other services.

### **3.2.4. Local Government: Municipal Finance Management Act, No. 56 of 2003**

Section 18(1) of the Local Government: Municipal Finance Management Act, No. 56 of 2003 (MFMA)(South Africa, 2003) provides parameters for funding of expenditure which "...may only be funded from..."

- Realistic anticipated revenues to be collected (Section 18(1)(a));
- Cash-backed funds from the previous year not already committed for other purposes (Section 18(1)(b));
- Borrowed funds, but only for capital projects (Section 18(1)(c));
- Realistic revenue budget based on previous collection levels (Section 18(2)(a)); and
- Based on actual revenue collected in previous financial years (Section 18(2)(b)).

Thus the MFMA provides the legal and financial framework for the collection of outstanding monies, as the collection of outstanding monies is directly linked to the cash or revenue available for spending, as directed by Section 152 of the Constitution (South Africa, 1996).

Section 64(2)(g) instructs municipalities to levy interest unless otherwise stated in a policy.

### **3.2.5. National Credit Act, No. 34 of 2005**

In terms of the definition of ‘consumer’, ‘continuous services’ and ‘incidental credit agreement’, the National Credit Act (NCA), 2005 applies to municipalities with regard to the levying of interest on late payments for electricity consumption as part of the municipal account (South Africa, 2005c). This interest qualifies for debt review in terms of Section 86, and that interest is raised thirty days after the date that the periodic statement is delivered (Section 4(6)(b)(ii)).

### **3.2.6. Consumer Protection Act, No. 68 of 2008**

One of the key aspects of the Consumer Protection Act, 2008 (South Africa, 2008b) is the guarding against discriminative marketing, as per Section 8. Many of the services provided by municipalities are monopolised services and no competition exists with other providers. Consumers’ right to privacy also refers to marketing; thus municipalities must ensure privacy by treating all customer-related information as confidential.

This Act also relates to the credit control and debt collection policy in terms of Section 22, namely the use of understandable language – municipalities will need to ensure that documents, statements, application forms and contracts are written in easy and understandable language.

### **3.2.7. Magistrates Court Act, No. 32 of 1944**

The Magistrates Court Act, 1944, is an important Act as a mechanism for collecting outstanding debt and municipalities need to understand the process and structure of magistrate’s courts per the Act, both for civil and criminal actions. Municipalities operating in more than one magisterial area must be aware of the content of the definition of ‘district’ (South Africa, 1944).

### 3.2.8. Prescription Act, No. 68 of 1969

Section 10 of the Prescription Act, 1969 (South Africa, 1969) provides a framework for the extinction (cancellation) of debt by prescription (i.e. after the lapse of a specified time period). Section 11 provides information as to periods of prescription in terms of years attached to specific type of debt, namely:

- Any judgment debt or any taxation (including rates) – 30 years (Section 11(a)(ii) and (iii));
- Any bill of exchange or negotiable instrument – 6 years (Section 11(c)); and
- Any other debt – 3 years (Section 11(d)).

Section 12 provides information as to when prescription begins to run:

- Prescription starts when the debt is due (Section 12(1)); and
- A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arise (Section 12(3)).

Section 14 includes the interruption of prescription and Section 15 the judicial interruption of prescription:

- Express or tacit acknowledgement of liability of debt (Section 14(1));
- If prescription is interrupted then prescription will start afresh on the date at which interruption takes place (Section 14(2));
- Prescription will be interrupted by service on the debtor of any process whereby the creditor claims payment of the debt (Section 15(1));
- Prescription will not be interrupted if the creditor does not prosecute the claim successfully to final judgment, or if the creditor prosecutes the claim, but abandons or sets aside the judgment (Section 15(2)); and
- Process in terms of Section 15(2) means petition, notice of motion, a rule *nisi*, a pleading in reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced (Section 15(6)). It should be noted that there is a common misconception that the rendering of accounts or demands interrupt prescription.

In terms of Section 13 of the Prescription Act, 1969, prescription is delayed in the following circumstances:

- If debtor is outside the Republic (Section 13(b));
- If the debt is the object of a dispute subject to arbitration (Section 13(f));

- If the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation (Section 13(g));
- If the debtor is deceased and an executor of the estate is not yet appointed (Section 13(h)); and

The relevant period of prescription would, but for the provision this Act, be completed before or on, or within one year after the day on which the relevant impediment referred to in subsections (b), (f), (g) and (h) has ceased to exist, the period of prescription shall not be completed before a year has elapsed (Section 13(i)).

### **3.2.9. Insolvency Act, No. 24 of 1936**

When an individual is unable to pay his debt, his/her estate may be placed under sequestration by order of the High Court. The debtor is then referred to as the “insolvent estate”, in terms of the Insolvency Act (South Africa, 1936).

The assets of the insolvent are, with certain exceptions, taken away from the insolvent and are sold or otherwise turned into cash. After payment of the costs of realisation and of winding up the estate, the net proceeds of the assets are distributed amongst the proved creditors of the estate in accordance with their respective rights.

The whole process of winding up an insolvent estate is carried out by a person known as ‘the trustee’. The rights and duties of a trustee and the procedure to be followed by him are prescribed in Section 24 of the Insolvency Act, 1936.

The winding up of a company may be either by order of the court (compulsory liquidation) or by resolution of the members (voluntary liquidation). Either way, the company is thereafter described as being ‘in liquidation’; with these two words being added to the company's name. The person who conducts the process of winding up such a company is known as ‘the liquidator’. The rights and the duties of a liquidator are set out in Chapter XIV of the Companies Act, No. 71 of 2008 (South Africa, 2008a).

The effective date of sequestration of an insolvent as per the Insolvency Act, 1936 is:

- In the case of voluntary surrender – the date on which the surrender of the estate is accepted by the court (Section 6); and
- In the case of a compulsory sequestration – the date on which provisional order of sequestration is granted (Section 10).

Section 20 of the Insolvency Act, 1936 sets out the effects of sequestration on the estate of the insolvent, and Section 37 upon a lease.

Every estate coming under the jurisdiction of a Master is given an official reference number, in accordance with its order of entry in the appropriate register of estates kept by the Master. All filling of records in the Master's office is undertaken on an estate numerical basis. This official estate reference number must therefore always be quoted in all correspondence and dealings with the Master and in the heading of all accounts lodged with him. The Master is required to give notice in the *Government Gazette* that the order has been made (Section 17(4)). It is from this source that municipalities compile their insolvency lists. At the same time and in the same notice in the *Gazette*, the Master must immediately convene a first meeting of creditors of the estate for the proof of creditors' claims against the estate and for the appointment of a Trustee (Section 40(1)).

All appointments of Trustees must be confirmed by the Master who will issue a 'certificate of appointment' which is the trustees' authority to act in the estate named therein (Section 56(2)). More than one trustee may be appointed. It is common practice that only one of the appointed trustees deals with the direct administration of the estate.

There are three categories of claims, namely:

- Secured on a particular asset;
- Preferent on free residue; and
- Unsecured and otherwise non-preferent, more commonly known as "concurrent claims".

A subtle difference exists between the meaning of the word "preferent" as it is defined and used in the Insolvency Act, 1936 and the word as it is used in practice, which must be understood and appreciated: in Section 2 definitions of the Act, "preference" in relation to any other claim against an insolvent estate, means the right to payment of that claim out of the assets of the estate in preference to other claims.

The definition of "security" in the same section is: "property over which the creditor has a preferent right by virtue of any special mortgage, landlord's legal hypothec, pledge or right of retention", and "free residue" means that portion of the estate which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention.

In other words, when the Act refers to “preferent” claims, the word generally embraces both types of claims, that is, those which are preferent so far as payment out of the proceeds of an encumbered asset are concerned, and those which have priority of payment from the free residue over other claims ranking thereon; that is, preferent on the free residue only.

The word “preferent” is used almost exclusively to indicate only those claims which have a preferent right to payment out of the free residue. Claims which have a preferent right to rank on an encumbered asset are generally described as “secured claims”. Claims which the Act speaks of as “non-preferent” are usually referred to in everyday speech as “concurrent”, although this word is not used in the Insolvency Act, 1936.

In view of the preference afforded to tax, municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, Section 118(3) of the Systems Act, 2000 is generally referred to as “preferent” (although a portion thereof is in fact a charge in realising the asset and are therefore an administration expense). If they are levied in terms of an unregistered lease or other agreements then they shall be “concurrent”.

Post-sequestration accounts are those accounts which have accrued after the date of sequestration and which were not specifically requested as a service by the trustee or otherwise catered for.

Administration accounts are those accounts specifically requested by the trustee and for which the trustee is liable from date of sequestration onwards. All terms are to be strictly cash only.

### **3.2.10. Local Government: Municipal Structures Act, No. 117 of 1998**

The rendering of services detailed in the Constitution, 1996 are confirmed in Chapter 5 of this Act, under “...functions and powers of municipalities...” The chapter guides the delivery of services as through the various types of municipalities, as set out in terms of Section 155 of the Constitution, 1996 (South Africa, 1998b).

The intention of the Structures Act, 1998 is to provide the structural mechanism through which the abovementioned services must be rendered.

### **3.2.11. Electricity Regulations Act, No. 4 of 2006**

This Act is very technical in nature, but two provisions impact on the credit control and debt collection policy, namely the tariff principles as per Section 16, and the powers to enter and inspect property, as per Section 23 (South Africa, 2006).

### **3.2.12. Promotion of Access to Information Act, No. 2 of 2000**

In terms of Section 9(a) of the Promotion of Access to Information Act, 2000, the objective of the Act is the accessibility of information held by the state; this is therefore, also applicable to municipalities when a customer requests information with regard to accounts. Section 11 of the Act provides customers of public bodies the right to access records related to their accounts (South Africa, 2000c).

### **3.2.13. Promotion of Administrative Justice Act, No. 3 of 2000**

Section 3 of the Promotion of Administrative Justice Act, 2000 (South Africa, 2000d) provides for procedurally fair administrative action where a person's rights are materially affected. It is therefore important to ensure that adequate notice and a reasonable opportunity is provided before proceeding with the administrative action.

Section 5 of the Act provides customers with the right to request reasons for administrative action. Municipalities must therefore ensure that all credit control and debt collection actions are applied in terms of the credit control and debt collection policy.

### **3.2.14. The White Paper on Local Government, 1998**

After the finalisation of the Constitution of 1996, the White Paper on Local Government, dated 9 March 1998, was formulated. It provided guidelines for the interaction of local government with other spheres of government and the structuring of the Transitional Phase. The White Paper also provided the framework for the promulgation of other related legislation (South Africa, 1998e).

### **3.2.15. Water Services Act, No. 108 of 1997**

The Water Services Act, 1997 (South Africa, 1997b) regulates the supply of water. The following sections of the Act are closely linked to the collection of outstanding monies and the credit control and debt collection policy:

- Section 2(a) provides everybody with the right of access to basic water supply and basic human sanitation;
- Section 4(2) provides for the provision of conditions of payment and the issues relating to limited and discontinued services – these two conditions need to be incorporated into the credit control and debt collection policy; and

Section 4(3)(c) stipulates that procedures regarding limited or discontinued services must not result in a person being denied access to water where that person proves, to the satisfaction of the water service provider, that he or she is unable to pay for basic services.

### **3.2.16. Interpretation Act, No. 23 of 2005**

This Act (South Africa, 2005b) provides the mechanisms for the interpretation of other legislation or judgments; the most common interpretation for municipalities is the credit control and debt collection policy.

### **3.2.17. Companies Act, No. 71 of 2008**

Chapter 6 of the Companies Act, 2008 (South Africa, 2008) regulates the rescue of companies and Closed Corporations – this means that municipalities will not be able to act against the accumulated debt as at date of the application, as long as a company or Closed Corporation settles the future current municipal account (Section 133(1)). Although the intended rescue would not be longer than 6 months in terms of the definition ‘financially distressed’, Section 132 is not supporting the view of limited duration.

### **3.2.18. Children’s Act, No. 38 of 2005**

The importance of the Children’s Act, 2005 for debt collection by municipalities is related to ownership by child-headed households or minors owing property. Municipalities will need to ensure that they act within the legal framework with regard to ownership and collection of outstanding debt from these owners (South Africa, 2005a).

### **3.2.19. Close Corporation Act, No. 69 of 1984**

Section 5 of this Act allows municipalities to inspect and copy records to determine the owner(s)/members’ interest. This information is important when instituting credit control and debt collection processes and procedures (South Africa, 1984a).



### **3.2.20. Communal Rights Act, No. 11 of 2004**

The importance of the Communal Rights Act, 2004 (South Africa, 2004a) relates to the defining of ownership in terms of municipal accounts and the responsibility of paying such accounts – the definition of the various types of communal rights are important when municipalities apply normal credit control and debt collection actions.

### **3.2.21. Deeds Registry Act, No. 47 of 1937**

Section 118 of the Systems Act, 2000, links directly to the Deeds Registry Act, 1937 (South Africa, 1937) when the Deeds Registrar must accept an application for rates clearance. Section 118(1)(b) is one of the most debated sections in deeds registration circles, as many municipalities differ regarding the interpretation of “two years preceding the date of application for rates clearance”.

### **3.2.22. Disaster Management Act, No. 57 of 2002**

The Disaster Management Act, No. 57 of 2002 relates directly to the rates policy and as such needs to be taken in consideration when amongst other aligning the credit control and debt collection policy (South Africa, 2002a).

### **3.2.23. Electronic Communications and Transactions Act, No. 25 of 2002**

Section 2 of this Act states that one of its objectives is to enable and facilitate electronic communication and transactions in the public interest. To ensure the legality of communication mediums, municipalities need to adhere to Section 4(3) (Schedule 1) and Section 4(4) (Schedule 2) of the Electronic and Communications Act, 2002 (South Africa, 2002b).

### **3.2.24. Income Tax Act, No. 58 of 1962**

Although the Income Tax Act, 1962, does not impact directly on any credit control and debt collection process or procedure, Chapter IV of the Act provides useful options for the collection of outstanding monies (South Africa, 1962). It is anticipated that with the approval of the National Minister of Finance, in due course municipalities will be able to utilise fully some of these collection options.

### **3.2.25. Institution of Legal Proceedings against Certain Organs of the State Act, No. 40 of 2002**

This Act (South Africa, 2002c) must be studied and used in conjunction with the Prescription Act, No. 68 of 1969 (South Africa, 1969) and the Bill of Rights in the Constitution (South Africa, 1996). The definition of “organ of state” includes “a municipality” as contemplated in Section 151 of the Constitution, 1996. As this Act will be a useful tool for the customers of organs of state, it is important that credit control and debt collection policy is aligned with these Acts and that the content, process and validity of legal proceedings against defaulting customers also conform with these Acts to avoid legal proceedings.

### **3.2.26. Land Assistance Act, No. 126 of 1993**

The Land Assistance Act, 1993 (South Africa, 1993b) relates directly to the rates policy and as such needs to be taken in consideration when aligning the credit control and debt collection policies. This Act also provides assistance in terms of defining ownership for the purpose of levying rates and services and the collection thereof.

### **3.2.27. Local Government: Municipal Demarcation Act, No. 27 of 1998**

This Act sets the framework for defining municipal boundaries, thus demarcating the area for which each municipality would be responsible (South Africa, 1998a).

### **3.2.28. Local Government: Municipal Electoral Act, No. 27 of 2000**

This Act is important as it provides the framework and mechanism for the way in which municipal voters need to be registered to be able to vote during local government elections (South Africa, 2000a).

### **3.2.29. Marriage Act, No. 25 of 1961**

The importance of the Marriage Act, 1961, relates to the definition of ownership in terms of municipal accounts and the responsibility of paying such accounts – the definition of the various types of marriage will be important when municipalities apply normal credit control and debt collection actions. Municipalities also need to understand ownership in situations of divorce. Normal billing systems of municipalities need to be able to accommodate a range of definitions related to marriage and divorce (South Africa, 1961).

### **3.2.30. Matrimonial Property Act, No. 88 of 1984**

The importance of the Matrimonial Property Act, 1984 (South Africa, 1984b) relates to the defining of ownership in terms of municipal accounts and the responsibility of paying such accounts – the definition of the various types of matrimonial relationships will be important when municipalities apply normal credit control and debt collection actions.

### **3.2.31. Prevention of Illegal Eviction From and Unlawful Occupation Of Land Act, No. 19 of 1998**

Section 6(1) of this Act (South Africa, 1998c) is a useful tool that can be utilised by municipalities to get illegal occupiers off the land. However, from a credit control and debt collection perspective the use of this legislation is very limited for collection purposes.

### **3.2.32. Restitution of Land Rights Act, No. 22 of 1984**

The Restitution of Land Rights Act, 1994 (South Africa, 1984c) also relates directly to the rates policy and needs to be taken in consideration when aligning the credit control and debt collection policies. It also provides assistance in terms of defining ownership for the purpose of levying rates and services and the collection thereof.

### **3.2.33. Sectional Titles Act, No. 95 of 1986**

The Sectional Titles Act, 1986, defines ownership of property registered under this Act (South Africa, 1986). The definition of ‘body corporate’ (Section 36(1)) is important when defining the owner when providing accounts and collecting outstanding debt. Municipalities will need to understand sectional title scheme rules when instituting court action.

Section 10(1) of the Property Rates Act, No. 6 of 2004 (South Africa, 2004b) clearly provides that municipalities need to provide a rates account to the individual title units.

### **3.2.34. Share Block Control Act, No. 59 of 1980**

The Share Block Control Act, 1980 (South Africa, 1980) will assist municipalities to determine ownership and responsibility, in conjunction with the Sectional Titles Act, 1986 (South Africa, 1986).

### **3.2.35. Supreme Court Act, No. 59 of 1959**

The role of the Supreme Court Act, 1959 (South Africa, 1959), is similar to that of the Magistrates Court Act, 1944 (South Africa, 1994) and is an important mechanism for

collecting outstanding debt. Municipalities will need to understand the process and structure of the courts per this Act for both for civil and criminal actions, and must note the content of Section 20 with regard to appeals.

### **3.2.36. Trust Property Control Act, No. 57 of 1988**

The importance of this Act is its definition of “ownership” and in particular the definition of a “trust”. Municipalities will need to understand the concept of ownership to ensure legal and effective collection of outstanding monies (South Africa, 1988).

### **3.3. PROVINCIAL LEGISLATION AND ORDINANCES**

Any applicable provincial Act or Ordinance within a province may affect the raising and collection of debt. The following Ordinances are still applicable in the Western Cape:

Municipal Ordinance, 20 of 1974; and

Land Use Planning, 15 of 1985.

### **3.4. POLICIES AND BY-LAWS**

The framework and stipulations of an internal credit control and debt collection policy and supporting by-laws will guide the day-to-day operations of a typical credit control and debt collection function. The credit control and debt collection policy and by-laws need to be aligned to existing national and provincial legislation. Under no circumstances must consideration be given to “replacing” or “creating” new legislation, as per the Supreme Court of Appeal judgement in *Dadoo Ltd. and others v Krugersdorp Municipal Council (Dadoo Ltd. and others v Krugersdorp Municipal Council, [1920] A.D. 530)*. The following policies and by-laws are of importance:

- Credit control and debt collection;
- Rates; and
- Tariffs.

Policies and/or by-laws detailed in this paragraph indirectly impact on the collection of outstanding monies.

### **3.4.1.Credit Control and Debt Collection Policy and By-Law**

A credit control and debt collection policy and by-law must be compiled in terms of Section 96 of the Systems Act, 2000 (South Africa, 2000b). A generic by-law is available on the website of the Provincial Government of the Western Cape (Western Cape (South Africa), 2010).

The following key issues need to be highlighted:

**Section 2 (Scope):** The credit control and debt collection mechanisms and procedures in this by-law aim to ensure the collection of all moneys due and payable to the municipality, including but not limited to fees, charges or tariffs in respect of services, rates, sundry levies and interest on any outstanding amount;

**Section 3 (Provision of services):** Any person who wishes to make use of a service must apply for it on the prescribed official form. An application for a service must be lodged with the municipality in terms of the provisions of the particular by-law regulating the relevant service or in terms of the policy if the particular by-law does not contain such a provision. Any person who no longer wishes to make use of a service must inform the municipal manager thereof in writing on the official form;

**Section 4 (Service agreement):** Unless provided differently in a by-law referred to in Section 3 above, or any other applicable legislation, a person whose application for a service has been approved must enter into an agreement with the municipality for the rendering of such service. The municipal manager may, on behalf of the municipality, enter into an agreement with a person requiring a service and except as otherwise determined in this by-law, no service will be rendered until an agreement has been entered into between the municipality and the user;

**Section 5 (Charges for services and amount of rates):** All fees, charges or tariffs payable in respect of services, including but not limited to the payment of the connection charges, fixed charges or any additional charges and interest on outstanding amounts are determined by the council in accordance with Section 75A of the Systems Act, 2000(South Africa, 2000b) and its tariff policy and by-law in respect thereof. The amount of rates payable by the owner of rateable property and interest on outstanding amounts are determined by the council in accordance with Chapter 2 of the Property Rates Act, No. 6 of 2004(South Africa, 2004b) and its rates policy and by-law;

**Section 6 (Deposits):** Deposits are payable in respect of water and electricity services only, provided that no deposit is payable if a pre-payment meter is installed for the particular service. Deposits are payable in advance for the provision of new services or the reconnection of services. The council determines deposits for the different categories of users and services when it determines tariffs annually. The municipal manager may adjust the amount of any existing deposit, as set out in the policy;

**Section 7 (Interest charges):** The municipal manager must monthly charge and recover interest in respect of any debt that is in arrears after the due date, from the first working day of the month following the due date;

**Section 8 (Debt collection responsibility):** The municipal manager must collect all money that is due and payable to the municipality, subject to the Systems Act, 2000, and Property Rates Act, 2004, this by-law or any other applicable legislation. No deviation from the policy is permissible without amendment to the policy itself;

**Section 9 (Agreement to pay arrears):** The municipal manager may enter into a debt agreement with a debtor, subject to the provisions of the policy. A debtor, who refuses to enter into a debt agreement in respect of any arrear debt, will be dealt with as prescribed in the policy. Should any dispute arise as to the amount of the arrear debt, the debtor must nevertheless continue to make regular payments, in terms of the debt agreement, until such time as the dispute has been settled;

**Section 10 (Restriction or disconnection of supply of services):** The municipal manager may restrict or disconnect the supply of water or electricity, or discontinue any other service to the premises of any user whenever such user fails to make payment before or on the due date, fails to comply with a debt agreement, unlawfully reconnects a restricted or disconnected service, tampers with a service or bypasses a meter or fails to comply with a condition of supply imposed by the municipality. The municipal manager may reconnect and restore full levels of supply of any of the restricted or discontinued services only after the arrear debt, including interest and the costs of disconnection or reconnection, has been paid in full and any other conditions of the municipality have been complied with or after a debt agreement with the debtor has been concluded;

**Section 11 (Recovery of costs):** The municipal manager may recover the following costs, incurred by or on behalf of the municipality: actual costs and administration fees where payments made to the municipality by negotiable instruments are dishonoured by banks when

presented for payment; all legal and administration costs, including attorney-and-client costs; interest on arrears; collection commission; and tracing fees incurred in the recovery of debts. Further, the actual costs incurred relating to any action taken in demanding payment from a user or reminding a user by means of telephone, fax, email, letter or otherwise; disconnection, defaulter and reconnection fees, where any service has been disconnected as a result of non-compliance with this by-law; and any losses the municipality may suffer as a result of tampering with municipal equipment or meters;

**Section 12 (Consolidation and crediting of accounts):** The municipal manager may consolidate any separate accounts of a debtor, credit a payment by such a debtor against any account of that debtor and appropriate any payment by a user, first to the costs referred to in this section and then to any interest charges due and thereafter to the outstanding amount;

**Section 13 (Attachment):** In order to recover debt, the municipal manager may, as a last resort, apply to a competent court to attach a debtor's movable and immovable property. The municipal manager may apply to a court for the attachment of any rent, due in respect of any rateable property, to cover in part or in full any amount in respect of property rates outstanding for a period longer than three months after the due date for payment;

**Section 14 (Payments):** Any amount tendered in defrayment of a debt will be accepted at any cash receiving office of the municipality or office of an authorised agent. An offer of payment in full and final settlement of a debt, whilst such amount is less than the outstanding amount will be credited against the debtor's account, but without admitting acceptance of the offer. Only official receipts of the municipality are recognised as proof of payment;

**Section 15 (Indigents):** A debtor, who can prove indigence, will be dealt with as prescribed in the policy;

**Section 16 (Amendments to the policy):** The mayor must, when preparing the annual budget, co-ordinate the processes for reviewing the policy in terms of the MFMA (South Africa, 2003) if necessary. Any changes to the policy must be approved together with the adoption of the annual budget in terms of the MFMA, 2003 and published as an amendment to the by-law;

**Section 17 (Delegation 17):** The municipal manager may in writing delegate any power or duty conferred on the municipal manager in terms of this by-law, to an official of the municipality;

**Section 18 (Refund of payments not due to council):** Where any amount has been paid to the council by or on behalf of any person in consequence of an error of fact or of law while such amount is not lawfully due to the council, the municipal manager must, on written application within a period of twelve months from the payment of such amount, refund such person. Notwithstanding the provisions the municipal manager may use such amount in full or partial settlement of any other amount due and payable to the council by such person on the date of such application, and refund the balance (if any) of such amount after such settlement; and

**Section 19 (Offences and penalties):** Any person who obstructs or hinders the municipal manager or any official of the municipality in the execution of his or her duties under this by-law namely: uses or interferes with municipal equipment or consumption of services supplied; tampers with any municipal equipment or breaks any seal on a meter; contravenes or fails to comply with the provisions of this by-law or the policy; or fails to comply with a notice served in terms of this by-law, is guilty of an offence and liable on conviction to pay a fine.

The Provincial Government of the Western Cape proposed (Western Cape (South Africa), 2010) the following detailed schedules related to the compiling of a credit control and debt collection policy and by-law:

- Part 1 – Rates;
- Part 2 – Services;
- Part 3 – Housing;
- Part 4 – Other Debt;
- Part 5 – Indigent Relief
- Part 6 – Queries, Complaints and Appeals; and
- Part 7 – Regional Services Levy (no more applicable).

Although proposed generic policies are published, for instance by the Western Cape Province (Western Cape (South Africa), 2010), it appears that municipalities are not adopting these principles nor are they obliged to follow these proposals. Therefore each municipality in the Republic of South Africa could have its own policies and by-laws, with strong and weak areas, and the success or failure of a debt collection strategy may be based on the content contained therein.



### **3.4.2. Rates Policy and By-Law**

A rates policy must be compiled in terms of Section 3 of the Property Rates Act, 2004 (South Africa, 2004b). A generic by-law is available on the website of the Provincial Government of the Western Cape (Western Cape (South Africa), 2010).

The following key items that must be contained in the by-law are:

**Section 2 (Rating of property):** In terms of Section 2(3) of the Property Rates Act, 2004 the power of the municipality to levy rates on property is subject to Section 229 and other applicable provisions of the Constitution of 1996 (South Africa, 1996), the provisions of the Property Rates Act, 2004, the municipality's rates policy and the proposed by-law;

**Section 3 (General principles):** Rates are levied as an amount in the rand based on the market value of all rateable property contained in the municipality's valuation roll. Criteria are provided for the determination of categories of property and owners and for the purpose of levying different rates on categories of property and owners; different rates will be levied for different categories of rateable property; relief measures in respect of payment for rates will not be granted to any category of property or owners on an individual basis, other than by way of an exemption, rebate or reduction. All ratepayers with similar properties will be treated the same. The ability of a person to pay rates will be taken into account. Provision will be made for the promotion of local social development and sustainable local government. Rates will be based on the value of all rateable property and the amount required by the municipality to balance the operating budget;

**Section 4 (Classification of services and expenditure):** The municipal manager or his/her nominee is subject to the guidelines provided by the National Treasury and executive mayor or committee, and principles contained in the rates policy, that classify services, categorise expenditure and create cost centres to prevent property rates from subsidising trading and economic services; trading and economic services must be ring-fenced and financed from service charges while community and subsidised services must be financed from profits on trading and economic services, regulatory fees and rates-related income;

**Section 5 (Categories of properties and owners):** In terms of Section 3(3) of the Property Rates Act, 2004 the municipality must determine the criteria for the determination of categories of property and owners for granting exemptions, reductions and rebates, and criteria if it levies different rates for different categories of property. In terms of Sections 8(1) and 15(1) of the Property Rates Act, 2004 read in conjunction with Section 19, the

municipality may exempt a category of owner of property from rates or grant a rebate or reduction in the rates. The criteria for categories of property and owners and the different categories of property and owners are reflected in the municipality's rates policy and adjusted annually, if required, during the budget process;

**Section 6 (Properties used for multiple purposes):** Rates on properties used for multiple purposes will be levied on properties used for a purpose corresponding with the permitted use of the property, if the permitted use of the property is regulated. A purpose corresponding with the dominant use of the property or by apportioning the market value of a property to the different purposes for which the property is used and applying the relevant cent amount in the rand to the corresponding apportioned market value;

**Section 7 (Differential rating):** Criteria for differential rating on different categories of properties in terms of Section 8(1) of the Property Rates Act, 2004 will be according to the use of the property, permitted use of the property or geographical area in which the property is situated. Differential rating among the various property categories will be done by way of setting different cent amount in the rand for each property category and/or by way of reductions and rebates;

**Section 8 (Criteria for exemptions, reductions and rebates):** Criteria for determining categories of owners of property for the purpose of granting exemptions, rebates and reductions in terms of Section 15(2) of the Property Rates Act, 2004 will be according to the indigent status of the owner of a property, sources of income of the owner of a property, owners of property situated within an area affected by a disaster within the meaning of the Disaster Management Act, No. 57 of 2002 (South Africa, 2002a) or any other serious adverse social or economic conditions. Owners of residential properties with a market value below a determined threshold or owners of agricultural properties who are *bona fide* farmers;

**Section 9 (Exemptions):** Over and above the exemptions provided for in Sections 16 and 17 of the Property Rates Act, 2004 specific categories of property as indicated are exempted from the payment of rates within the meaning of Section 15(1)(a) of the Property Rates Act, 2004. Municipal properties are exempted from paying rates as it will increase the rates burden or service charges to property owners or consumers. All residential properties with a market value of less than R17 000 are exempted from paying rates. The R15 000 impermissible rates contemplated in terms of Section 17(1)(h) of the Property Rates Act, 2004 is included in the R17 000 amount. This is an important part of the council's indigent policy and is aimed

primarily at alleviating poverty. Cemeteries and crematoriums registered in the names of private persons and operated not for gain will be exempted. Public service infrastructure is exempted from paying rates as they provide essential services to the community. Public benefit organisations as provided for in the rates policy may apply for the exemption of property rates subject to producing a tax exemption certificate issued by the South African Revenue Services as contemplated in Part 1 of the Ninth Schedule of the Income Tax Act, 58 of 1962 (South Africa, 1962). Exemptions will be subject to the following conditions, namely: all applications must be addressed in writing to the municipality; a South African Revenue Services tax exemption certificate must be attached to all applications; the municipal manager or his/her nominee must approve all applications; applications must reach the municipality before the end of October preceding the start of the new municipal financial year for which relief is sought; and the municipality retains the right to refuse exemptions if the details supplied in the application form were incomplete, incorrect or false;

**Section 10 (Rebates):** The municipality may grant rebates within the meaning of Section 15(1)(b) of the Property Rates Act, 2004. The municipality may grant rebates to rateable enterprises that promote local social and economic development in its area of jurisdiction, based on its social and economic development policy. The following criteria will apply: job creation in the municipal area; social upliftment of the local community; and creation of infrastructure for the benefit of the community. Rebates will be granted on application subject to a business plan issued by the directors of the company indicating how the local, social and economic development objectives of the municipality are going to be met, a continuation plan issued by the directors and certified by auditors of the company stating that the objectives have been met in the first year after establishment and how the company plans to continue to meet the objectives. State properties receive a rebate of 20%. Residential properties: the municipality grants a 20% rebate, which applies to improved residential property that is used predominantly for residential purposes, with not more than two dwelling units per property, registered in terms of the Sectional Title Act, 1986, No. 95 of 1986 (South Africa, 1986), owned by a share-block company, or a rateable residence on property used for or related to educational purposes. Agricultural property rebate: agricultural properties will be granted a rebate based on certain information in an affidavit by 30 September each year. Qualifying requirements are that the owner should be taxed by South African Revenue Services as a farmer and the last tax assessment must be provided as proof or where the owner is not taxed as farmer, proof is required that income from farming activities exceeds 40% of the

household income. The following rebates will apply, namely a 7.5% rebate if there are no municipal roads next to the property or if there is no municipal sewerage to the property, or if there is no municipal electricity to the property or if there is no refuse removal that is provided by the municipality; 20% rebate, if water is not supplied by the municipality; a rebate of 5% will be granted to agricultural property that contributes substantially to job creation, and the salaries/wages of farm workers are reasonable, e.g. if they meet minimum standards set by government or if they are in line with the sector's average; or if the owner is providing permanent residential property to the farm workers and such property is registered in the name of these farm workers (proof must be provided); or if such residential properties are provided with potable water; or if the farmer electrifies such residential properties for the farm workers; or if the farmer avails his land/buildings to be used for cemetery, education and recreational purposes of the farm workers' children and nearby community in general;

**Section 11 (Reductions):** A reduction in the municipal valuation as contemplated in Section 15(1)(b) of the Property Rates Act, 2004 will be granted where the value of a property is affected by a disaster within the meaning of the Disaster Management Act, 2002 or any other serious adverse social or economic conditions. The reduction will be in relation to the certificate issued for this purpose by the municipal valuer. All categories of owners can apply for a reduction in the rates payable as described. Owners of the following categories of rateable property situated within the municipality may be granted a reduction within the meaning of Section 15(1)(b) of the Property Rates Act, 2004, namely residential, business, industrial, agricultural, state-owned properties, municipal properties, public service infrastructure, informal settlements, properties acquired through the provision of Land Assistance Act, No. 126 of 1993 (South Africa, 1993b) or the Restitution of Land Rights Act, No. 22 of 1994 (South Africa, 1994c), protected areas, national monuments, public benefit organisations, multiple purposes and private towns serviced by the developers or private towns serviced and maintained by the developers. A reduction in the municipal valuation as contemplated in Section 15(1)(b) of the Property Rates Act, 2004 will be granted where the value of a property is affected by fire damage, demolition or floods;

**Section 12 (Rates increases):** The municipality will consider increasing rates annually during the budget process in terms of the guidelines issued by National Treasury from time to time. Rate increases will be used to finance the increase in operating costs of community and subsidised services. With regard to community and subsidised services the following annual adjustments will be made: all salary and wage increases as agreed at the South African Local

Government Bargaining Council; an inflation adjustment for general expenditure, repairs and maintenance and contributions to statutory funds; additional depreciation costs or interest and redemption on loans associated with the assets created during the previous financial year; affordability of rates to ratepayers. Extraordinary expenditure related to community services not foreseen during the previous budget period and approved by the council during a budget review process will be financed by an increase in property rates. All increases in property rates will be communicated to the local community in terms of the municipality's policy on community participation;

**Section 13 (Notification of rates):** The municipality will give notice of all rates approved at the annual budget meeting at least 30 days prior to the date that the rates become effective. Accounts delivered after the 30 days' notice will be based on the new rates. A notice stating the purport of the municipality's resolution and the date on which the new rates become operational will be displayed by the municipality at places installed for that purpose; and

**Section 14 (Payment of rates):** Ratepayers may choose between paying rates annually in one installment on or before 30 September or in twelve equal installments on or before the seventh day of the month following on the month in which it becomes payable.

### **3.4.3. Tariff Policy and By-Law**

A tariff policy and by-law must be compiled in terms of Section 75 of the Systems Act, 2000 (South Africa, 2000b). A generic by-law is available on the website of the Provincial Government of the Western Cape (Western Cape (South Africa), 2010). The following key issues are highlighted:

**Section 2 (Object):** The object of this by-law is to ensure that tariffs are determined to facilitate and ensure sustainable and affordable services and cost reflecting tariffs are determined that include capital, operating, maintenance, administrative and replacement costs for the various services rendered and functions performed by the council. Self-supporting tariffs are determined for trade and economic services and that any surpluses derived there from are transferred to rates and general services, which, due to the nature of the service, cannot be self-supporting. Uniform tariffs are determined that are applicable throughout the area of jurisdiction of council. Tariffs specifically for, but not limited to, water are determined that will discourage waste. The tariffs that every individual user or category of users must pay are generally in relation to the use of the service. As far as practical, cross-subsidation of different tariffs and concealed subsidies in tariffs are eliminated. Poor households can obtain

access to at least basic services by means of cross-subsidation through: tariffs that cover only operating and maintenance costs; special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service: or the free supply of 6 kilolitre water and 50 kWh electricity for domestic use. The awarding of compassionate subsidies on tariffs for basic services that include water, sanitation and refuse removal and any other direct or indirect method of subsidisation and/or cross subsidisation of tariffs for poor households. Provision may be made in appropriate circumstances for a surcharge on the tariff for a service. Provision is made for the promotion of local economic development through special tariffs for categories of commercial and industrial users. The economical, efficient and effective use of resources, the recycling of waste and other appropriate environmental objectives is encouraged and effect is given to the implementation and enforcement of the policy;

**Section 3 (Levying of tariffs):** The council determines tariffs when approving its budget for a budget year. The council only determines tariffs during the course of a financial year only when a new service is introduced, no tariff for an existing service has previously been imposed or it is necessary to correct a tariff already imposed. The council does not increase tariffs during a financial year, except when required in terms of a financial recovery plan in terms of Section 28(6) of the MFMA (South Africa, 2003).The council levies tariffs by resolution passed with a supporting vote of a majority of its members;

**Section 4 (Policy):** The council levies tariffs in terms of the policy as reflected in the schedule to this by-law. Differentiation in the policy between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters is necessary to achieve the objects of this by-law without unfair discrimination. The mayor must, when preparing the annual budget, co-ordinate the processes for reviewing the policy, if necessary. Any changes to the policy must be approved by the council together with the adoption of resolutions setting tariffs for the budget year and published as an amendment to the by-law;

**Section 5 (Public participation):** The municipal manager must immediately after an annual budget is tabled in the council in terms of Section 16 of the MFMA (South Africa, 2003) make public the draft resolutions setting any tariffs for the budget year and invite the local community to submit representations in connection with the proposal, submit the annual budget to the National Treasury, the Provincial Treasury and any provincial or national organs of state or municipalities as may be required in terms of Section 17 of the MFMA, 2003. The

council must, before finalizing any tariffs for the budget year, consider the views of the local community and the bodies referred to. The council must consult the local community in respect of strategic decisions relevant to the planning and provision of services and the influence thereof on tariffs; and

**Section 6 (Application):** This by-law is also applicable to the levying of tariffs for municipal services which are rendered by means of service delivery agreements, and which complies with the provisions of the Systems Act, 2000(South Africa, 2000b) and any other applicable legislation.

Information with regard to the following needs must be included in the by-law:

- Part 1 – Tariff principles;
- Part 2 – Electricity;
- Part 3 – Water;
- Part 4 – Waste water and sewerage; and
- Part 5 – Refuse removal.

#### 3.4.4. Other Policies

The following Policies will indirectly impact on credit control and debt management:

- Electricity;
- Water;
- City improvements districts;
- Special rating areas;
- Treated effluent;
- Incentive;
- Waste water; and
- Contract sureties.

#### 3.5. SELECTED JUDGMENTS

The following judgments from the High Court, Supreme Court of Appeal and Constitutional Court must be considered by the municipalities when applying the provisions contained in the applicable legislation and policies and by-laws. Note that Table 3.2 also relates to Sections 6.4 and 8.3.2. The weighting added by the researcher as explained above, and in terms of importance for credit control and debt collection, highlights the importance of the various judgments.

Table 3.2: Judgments	Weighting
City of Cape Town v Real People Housing (Pty) Ltd; Supreme Court of Appeal, 30 November 2009	500

Mkontwana v Nelson Mandela Metropolitan Municipality and another; Constitutional Court of South Africa, 6 October 2004	500
Beck and others v Kopanong Local Municipality; Orange Free State High Court (unreported), March 2002	400
Body Corporate Croftdene Mall v eThekweni Municipality; Supreme Court of Appeal, 10 October 2012	400
Hartzenberg and 8 others v Nelson Mandela Metropolitan Municipality (Despatch Administrative Unit); South East High Court, 10 September 2002	400
Joseph and others v City of Johannesburg and others; Constitutional Court of South Africa, 9 October 2009	400
Nelson Mandela Metropolitan Municipality v Nobumba NO and others; High Court of Eastern Cape, 5 November 2009	400
Rademan v Moqhaka Municipality and others; Supreme Court of Appeal, 1 December 2011	400
BOE Bank Ltd v City of Tshwane Metropolitan Municipality; Supreme Court of Appeal, 29 March 2005	300
City of Johannesburg v Even Grand 6 CC; Supreme Court of Appeal, 27 November 2008	300
City of Johannesburg v Harry Kaplan and another; Supreme Court of Appeal, 29 March 2006	300
City of Johannesburg v Renzon & Sons (Pty) Ltd; Witwatersrand High Court, 6 June 2005	300
Mazibuko and others v City of Johannesburg and others; Constitutional Court of South Africa, 8 October 2009	300
Dadoo Ltd. and others v Krugersdorp Municipality Council; Supreme Court of Appeal, 24 February 1920	200
Jafta v Schoeman and others; Constitutional Court of South Africa, 8 October 2004	200
Mkhize v Umvoti Municipality and others; KwaZulu-Natal High Court, 21 May 2010	200
Jacobus Johannes Liebenberg and 86 others v Bergrivier Municipality; Supreme Court of Appeal, 1 October 2013	100

### **3.5.1. City of Cape Town v Real People Housing (Pty) Ltd; Supreme Court of Appeal, 30 November 2009**

The City of Cape Town applies a policy of setting off debtor payments against the oldest debt first and therefore requested Real People Housing to provide full payment of outstanding arrears, which represented debt of the two years prior to Real People Housing's application for clearance to transfer the property.



The judgment clarifies the meaning and interpretation of Section 118 of the Systems Act, No.6 of 2000 (South Africa, 2000b) (*City of Cape Town v Real People Housing (Pty) Ltd.* [2009] S.A. 196 (SCA)).

Judge Nugent, on behalf of the Supreme Court of Appeal, ruled:

*Most of the remaining submissions made by counsel for the City were directed towards persuading us to read into the section an implied qualification to that express provision. I do not think it is necessary to detail the terms in which suggested provisos were framed. It is sufficient to say that all of them – indeed, any proviso that would have the effect of entitling the City to withhold a certificate until all debts were paid – would nullify the express language of the section and it might just as well not be there. I do not think it is necessary to cite authority for the trite proposition that a term cannot be implied in a statute if it would contradict its express terms. Had it been intended not to limit the period to two years then the words would not have appeared at all.*

The practical implication of this judgment is that municipalities must provide a clearance certificate if payment was received for services etc. during the two years preceding the date of application.

It is therefore in the best interest of municipalities to ensure effective and efficient collection of outstanding monies. Alternatively, municipalities must ensure that they utilise their preference right in terms of Section 118(3) of the Systems Act, 2000 before the property is transferred to the new owner.

### **3.5.2.Mkontwana v Nelson Mandela Metropolitan Municipality and another; Constitutional Court of South Africa, 6 October 2004**

Mkontwana leased out his property and the tenant then contracted with the municipality for services. Mkontwana was unwilling to assume responsibility for the debt of the tenant when applying for clearance in terms of Section 118(1) of the Systems Act, 2000 (South Africa, 2000b). The municipality was only willing to provide clearance upon payment of all outstanding debt, including the debt of the tenant.

The matter before the Court concerned the constitutional validity of laws that burdened owners of property for consumption charges for water and electricity supplied to occupants of the property who were not themselves the owners. Section 118(1) of the Systems Act, 2000 limited an owner's power to transfer immovable property, by providing that the Registrar of Deeds may not affect transfer of any property without a certificate issued by the

municipality stating that the consumption charges due, for a period of two years before the date of the issue of the certificate, have been paid.

Judge Yacoob found as follows:

*Interpreted in this way, s118(1) of the Act and s50(1)(a) of the ordinance would require that consumption charges due only by the owner for the relevant period must be paid as a precondition to transfer. This preferred construction involves an assumption that the purpose of enacting the laws in question is limited. The aim is to secure only those consumption charges due by the owner. It is highly unlikely that the purpose was so narrow. If it was, it is inconceivable that the text would not have said so expressly. Each of these provisions, on its face, is broadly worded and secures the payment of all consumption charges 'in connection with' the property.*

Therefore the finding was that owners remain responsible for the municipal account of properties even if such properties are rented out and the municipal accounts are in the name of the tenant (*Mkontwana v Nelson Mandela Metropolitan Municipality and another*. [2005 (1)] S.A. 530 (CC)).

Municipalities however need to ensure that all systems can support the provision of a duplicate account to the owner if requested. The credit control and debt collection policies also need to be responsive to the fundamental finding in this case, that owners will be held responsible for the accounts of tenants when applying for clearance in terms of Section 118 of the Systems Act, 2000.

### **3.5.3.Beck and others v Kopanong Local Municipality; Orange Free State High Court (unreported), March 2002**

Beck and others were in arrears with the water part of their municipal account with Kopanong Municipality; Kopanong instructed the third party delivering electricity to prevent Beck and others from purchasing electricity, based on the principle of a consolidated account. In this particular case buying pre-paid electricity was prevented because of water arrears. Beck and others argued that they received electricity from a third party and not from Kopanong and therefore the action to prevent buying of electricity for a debt of another organisation (Kopanong) was unconstitutional and illegal.

In this case Judge Ramai ruled as follows:

*In the light of the reciprocal relationship between a municipality and a resident (Section 95(a) Municipal Systems Act No. 32, 2000); the equitable treatment of all members of the community (Section 74(2)(a) Municipal Systems Act No. 32, 2000);the cultivation of a culture of social*

*justice (Section 97(1)(e) Municipal Systems Act No. 32, 2000); and the awesome responsibility of the municipality to devise procedures and mechanisms to implement an effective debt collection policy and a credit control policy, the right of a consumer to demand the provision of a municipal service must be considered with its corresponding duty. Such right is implicitly limited by the reciprocal and equitable obligations to pay the municipal service account in an unfragmented manner. The first respondent was entitled to discontinue the sale of energy coupons to the applicants by virtue of the breach of their reciprocal obligations, which they had committed. I am moved by considerations of social justice, equity and law to find that clause 7.2.4 of the Credit Control Principles and Measures; the municipal council resolutions which were adopted and the final municipal action taken against the applicants were permissible and justified. In my view the administrative action was lawful, reasonable and procedurally fair (sec 33 Constitution Act No. 1081996), regard being had to the circumstances of the case. I am not persuaded by the contention that the applicants' constitutional right had been violated.*

This judgment (*Beck and others v Kopanong Local Municipality*. Case no 3772/2002 unreported (Orange Free State)) is of utmost importance to municipalities as the electricity authority in this case was outside Kopanong Municipality, clearly indicating that the judge supported the fact of a consolidated municipal account in respect of the service provider.

#### **3.5.4 Body Corporate Croftdene Mall v eThekweni Municipality; Supreme Court of Appeal, 10 October 2012**

Ethekwini Municipality disconnected the electricity and water services of the Croftdene Body Corporate due to arrear rates, based on the stipulations in s102 of the Systems Act, regarding credit control and debt collection.

Croftdene requested an interdict against the local authority for this disconnection. The Supreme Court of Appeal confirmed two important principles:

- That a municipality can utilise the principle consolidation of accounts; and
- Disconnection of services for non-payment of the consolidated account is legal.

Municipalities can therefore disconnect services for rates based on the principle of consolidation as per the Systems Act; provided that the credit control and debt collection policy support this.

#### **3.5.5. Hartzenberg and 8 others v Nelson Mandela Metropolitan Municipality; South East High Court, 10 September 2002**

This case refers to the principle of disconnecting the supply of pre-paid electricity on account of failure to pay a water account. The Nelson Mandela Metropolitan Municipality disconnected the electricity supply to Hartzenberg and others because their water account was

in arrears. The municipality used the principle of a consolidated account and therefore argued the legality of disconnecting the electricity supply. However, the electricity supply was by means of a pre-paid meter where Hartzenberg and others bought the electricity up-front by means of pre-paid tokens. Hartzenberg and others argued that the municipality had no right to disconnect a service where such service was paid up-front.

Judge Liebenberg ruled that:

*The provisions relied upon by Mr Rorke are those contained in Section 102(1) (c). [Systems Act] He submitted that when these provisions are read with the provisions in Section 97(1) (g) it is clear that the respondent has the power to disconnect the electricity supply despite the fact that this has already been paid for, if the account for the supply of water is in arrears because it provides that any of the measures provide for may be implemented in respect of any arrears on any of the accounts of a person.*

Unfortunately the Nelson Mandela Metropolitan Municipality did not have a credit control and debt collection policy and by-law at that stage and as such Judge Liebenberg ruled in favour of Hartzenberg (*Hartzenberg and 8 others v Nelson Mandela Metropolitan Municipality (Despatch Administrative Unit)*). [2003] S.A. 10625 (SE)).

Municipalities that want to utilise the disconnection of pre-paid electricity as a mechanism to collect debt, must ensure that such mechanism is recorded in the credit control and debt collection policy.

### **3.5.6. Joseph and others v City of Johannesburg and others; Constitutional Court of South Africa, 9 October 2009**

The City of Johannesburg's electricity provider, City Power (Pty) Ltd., terminated the electricity supply to Joseph and others' place of residence following the accumulation by the landlord of substantial arrears in payments owing. In both courts Joseph and others sought the reconnection of their electricity supply and an order that they were entitled to procedural fairness in the form of notice and an opportunity to make representation to City Power before the supply was terminated. The difficulty arose in that the tenants (Joseph and others) had no contractual right to receive electricity from City Power: they paid their electricity bills to the landlord who had contracted with City Power for electricity supply. The crux of the case was therefore whether any legal relationship existed between Joseph and others and City Power outside the bounds of the contractual agreement that entitled Joseph and others procedural fairness before their household electricity supply was terminated.

Judge Skweyiya stated that:

*I am of the view that this matter concerns the relationship between a public service provider and consumers with whom it has no contractual relationship, and that principles of administrative and constitutional law – and not the law of contract – govern the issues that arise.*

The most important action flowing from his judgment is that municipalities must meet the basic needs of all inhabitants of South Africa and electricity is a basic service (paragraph 34). An entitlement to these services exists (paragraph 40). The users received the service in terms of their public rights (paragraph 47). The users are entitled to notice of the intention to termination of the services (paragraph 75). The users are entitled to engage with the service provider for a sustainable solution (paragraphs 63 and 64) (*Joseph and others v City of Johannesburg and others*. [2009] S.A. 55 (CC)).

### **3.5.7. Nelson Mandela Metropolitan Municipality v Nobumba NO and others; High Court of Eastern Cape, 5 November 2009**

Nelson Mandela Bay Municipality instituted an action against Mr Nobumba for unpaid rates and municipal service charges. When it applied for summary judgment, the magistrate struck the matter from the roll on the basis that it was not in compliance with the National Credit Act, No. 34 of 2005 (South Africa, 2005c). The municipality applied for a review and for the decision to be set aside.

Judge Plasket ruled on behalf of the High Court of South Africa, Eastern Cape:

*Section 2(1) of the Rates Act empowers a municipality to levy rates on property. The obligation on the part of a property owner to pay arises from this source, not from an agreement. As the NCA only concerns itself with credit agreements, it consequently does not apply to proceedings instituted by a municipality to recover due but unpaid rates.*

The judgment supports the fact that the National Credit Act is not applicable on local authorities, provided that the levying of interest on arrears falls within the approved legal framework (of prime plus one percent) and that the levying of such interest is 30 days after due date (*Nelson Mandela Metropolitan Municipality v Nobumba NO and others*. [2009] S.A. 579 (ECG)).

**3.5.8. Rademan v Moqhaka Municipality and others;  
Supreme Court of Appeal, 1 December 2011**

Mrs Rademan's electricity service was terminated by the local municipality because she did not pay rates and taxes – she only paid for electricity and water as she withheld payment on rates and taxes due to poor service delivery. Mrs Rademan successfully launched for the reconnection of her electricity. The municipality of Moqhaka appealed against the decision of the Free State High court.

Judge Bosielo, in concurrence with judges Lewis and Petse, ruled:

*Section 25(3) of the by-laws provides as follows: The right to restrict, disconnect or terminate service due to non-payment shall be in respect of any service rendered by the Municipality and shall prevail notwithstanding the fact that payment has been made in respect to of any specific service.*

*For a proper understanding of the legal issue facing us in this appeal, one should ask: what is a municipality expected to do when faced with a number of its residents who steadfastly refuse to pay their taxes and levies? Is a municipality expected to approach the court each time a ratepayer defaults to seek a court order authorizing discontinuation of services?*

*Such a proposition is both unrealistic and untenable. Given the rate of the protests and demonstrations for delivery across the country concomitant with the refusal by ratepayers to pay their rates and taxes and fees for municipal services, it would not be practical for municipalities to pursue these matters in court. Such a step would result in the municipalities being mired in such cases, losing precious time in the process and incurring high legal bills unnecessarily.*

*The central dispute in this matter is whether the municipality was justified in disconnecting the electricity supply to the appellant whilst the account for electricity was up to date.*

*In pursuit of its obligation to charge and receive payments for municipal services, a municipality has the option to consolidate the accounts for various services to provide. This is intended to circumvent the very problem confronting us in this appeal that is, allowing residents to choose which account they wish to pay and which they will not pay. Such tactics should not be allowed as they have the potential to frustrate a municipality in governing its area and, importantly meeting its constitutional obligations. It should be borne in mind that water and electricity are not the only municipal services that a municipality is responsible for. There is a plethora of other municipal services for which a municipality is responsible like building of roads and their maintenance, sewerage systems, refuse collection, recreational facilities. All these services are financed amongst others, by the revenue which a municipality collects from ratepayers as payment for these various municipal services. Such money*

*is split and used to provide the various essential municipal services. Thus a failure to pay rates and taxes is likely to have very serious consequences. I say this conscious of ratepayers' rights to protest and demonstrate whenever they have valid complaints against the municipality.*

*The unilateral refusal by ratepayers to pay for services which they enjoy cannot be condoned.*

*Local government is as important a tier of public administration as any. It has to continue functioning for the common good; it, however, cannot do so efficiently and effectively if every person who has a grievance about the conduct of a public official or a governmental structure were to take the law into his or her own hands or resort to self-help by withholding payment for services rendered. That conduct carries with it the potential for chaos and anarchy and can therefore not be appropriate.*

*There is no statutory instrument which requires a municipality to obtain a court order authorizing the discontinuation of a municipal service.*

*The appeal is dismissed with costs.*

It is clear from the judgment (*Rademan v Moqhaka Municipality & others*. [2011] S.A. 244 (SCA)) that the intention of the debt collection legal framework is to ensure payment to ensure future service delivery. Ratepayers and consumers cannot withhold payment or part thereof as a protest against poor service delivery.

The common understanding is that ratepayers and consumers should receive a consolidated municipal account that needs to be paid in full i.e. by a consolidated payment – selected payment for selected service/rates/taxes payment will not be allowed.

### **3.5.9. BOE Bank Ltd v City of Tshwane Metropolitan Municipality; Supreme Court of Appeal, 29 March 2005**

BOE Bank and City of Tshwane had competing claims to proceeds realised from a sale in execution of an immovable property. The outcomes of the dispute turned on the interpretation of Section 118(3) of the Systems Act, 2000 (South Africa, 2000b). In terms of Section 118(1) of the Systems Act, 2000 the registrar of deeds may not transfer property unless provided with a certificate by the municipality, stating that all levies and fees due during the two years preceding the date of application for the certificate have been fully paid. City of Tshwane argued that the amount due was according to Section 118(3) of the Systems Act, 2000 i.e. a charge upon the property and enjoyed preference over any mortgage bond registered against the property. BOE Bank on the other hand argued that debt older than two years, as per Section 118(1) of the Systems Act, is excluded from Section 118(3) of the same Act.

In his judgment Judge Brandt confirmed that the property remains a guarantee for municipal services and debt as per Section 118 of the Systems Act and that the guarantee is not subject to a two year period as per Section 118(1) of the Systems Act and Section 89(5) of Insolvency Act, No 24 of 1936 (South Africa, 1936) (*BOE Bank Ltd v City of Tshwane Metropolitan Municipality*. [2995] S.A. 21 (SCA)).

Judge Brandt remarked“ ... if the Legislature intended to render Section 118(3) subject to the same two-year limit contemplated in Section 118(1), it could have ... repeated the wording of the 1939 Transvaal Ordinance by simply referring to “any amounts due in terms of Section 118(1).”

The importance is therefore that municipalities need to utilise the guarantee in terms of Section 118(3) to ensure effective and efficient collection of outstanding monies

### **3.5.10. City of Johannesburg v Even Grand 6 CC; Supreme Court of Appeal, 27 November 2008**

This case revolves around whether a municipality is obliged, against payment by an insolvent of the proceeds of the sale of its immovable property, to issue a certificate that the property rates and other property fees payable to it have been paid despite the proceeds being less than the amount owed to the municipality.

Mr Manfred Hamburger, acting on behalf of Evan Grand 6 CC purchased four immovable properties at a public auction for a purchase price of R17 000. The auction was held at the instance of the executor in the Estate Late M E Ramos, acting in terms of Section 34 of the Administration of Estates Act, 1965. The amount owed to the City in respect of the four properties was R80 000.

In terms of Section 34(1) of the Administration of Estates Act, 1965 the executor of a deceased estate shall, on the expiry of the period allowed for the lodging of claims against the estate, satisfy himself as to the solvency of the estate and if he finds the estate to be insolvent, shall report the position of the estate to the creditors, informing them that unless the majority in number and value of all the creditors instruct him to surrender the estate under the Insolvency Act, 1936), he will proceed to realise the assets in the estate in accordance with the provisions of s34(2) of the Estates Act. Section 34(2) of the [Insolvency] Act provides that if the executor has not been directed to surrender the estate, he shall sell the assets in the estate. Having sold the assets in the estate, the executor has to submit to the Master an account of the liquidation and distribution of the estate. In terms of s34(7) (b) [of the



Insolvency Act] such account “shall provide for the distribution of the proceeds in the order of preference prescribed under the Insolvency Act, No 24 of 1936, in the case of a sequestrated estate”. Section 34(13) of the Estates Act stipulates that the provisions of the section shall not prevent the sequestration of any estate in terms of the Insolvency Act. In terms of s118(1) of the Systems Act, 2000, the registrar of deeds may not register the transfer of a property except on production of a prescribed certificate (‘a clearance certificate’) that the municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties (‘municipal debts’) that became due in connection with the property during the two years preceding the date of application for the certificate, have been fully paid.

However Even Grand 6 CC contended that in terms of Section 89 of the Insolvency Act, 1936, the City was obliged, against payment of the proceeds of the sale of the properties, to issue a certificate that all municipal debts in respect of the properties had been paid. As the municipal debts (some R80 000, as indicated above) that had become due during the two years preceding the date of application for the certificate were substantially more than R17 000 the City had refused to issue a clearance certificate. Even Grand 6 CC thereupon applied for, amongst others, an order that the City of Johannesburg issue and provide a clearance certificate, as envisaged in Section 92(1) of the Deeds Registries Act, 1937, valid for a period of no less than two months in respect of the particular properties.

Judge Streicher provided the following on behalf of the Supreme Court of Appeal:

*Section 118(1) of the Systems Act gives the appellant the right to veto the transfer of property until such time as the rates and other amounts due in respect of the period of two years preceding the date of application for the certificate have been fully paid. In the result the appellant’s claim is indeed, in effect, given a preference over other creditors. However, the section does not create any preference in favour of a municipality when it comes to the distribution of the assets or the proceeds of the assets in the estate. It provides a municipality with a different remedy to the one provided by s118(3). Section 118(1) is therefore not affected by the provisions of s34(7) (a), which deals with the order of preference applicable upon the distribution of an estate being administered in terms of s34(2). It follows that, in so far as the claim of the appellant is given preferential treatment in terms of s118(1), neither Section 118(2) nor Section 34(7) (a) contains any indication that, in the case of an insolvent estate being administered in terms of s34(2), the legislature had a different intention.*

From the judgment it is clear the municipalities are preferent in this regard and that Section 118(3) of the Systems Act,2000 still provides that the property is a guarantee against the debt

and that the two years as per Section 118(1) remains applicable and payable (*City of Johannesburg v Evan Grand 6 CC*. [2008] S.A. 111 (SCA)).

**3.5.11. City of Johannesburg v Harry Kaplan and another; Supreme Court of Appeal, 29 March 2006**

The City of Johannesburg appealed against the dismissal of its application for a declaratory order that the amount due by Harry Kaplan, in his capacity as liquidator of a close corporation which owned property in the city, was a charge upon the property and enjoyed preference in the distribution of the proceeds of the sale of the property over the bank mortgage bond registered against the property. Although the City based its appeal on the provisions of Section 118(1) of the Systems Act, 2000, the real issue was the application and effect of Section 89 of the Insolvency Act, No. 24 of 1936.

Judge Hefer provided the following on behalf of the Supreme Court of Appeal:

*Once a debtor has been sequestrated or liquidated the position is, to the extent that municipal debts are 'taxes' within the meaning of s89(5) (but not otherwise), the following –*

*No property may be transferred unless the clearance certificate certifies full payment of municipal debts that have become due during a period of two years before the date of application for the certificate.*

*The preference accorded by s118(3) in favour of the municipality over that of a holder of a mortgage bond is limited to claims which fell due during the period laid down in s89(1), for example two years prior to the date of sequestration or liquidation up to the date of transfer.*

*Interest charged on the secured claim of the municipality is secured as if it were part of the claim.*

The Supreme Court of Appeal concurred that a municipal debt is a debt against the property; it therefore supported the City of Johannesburg's right to claim the money as a preferent claim against the property (*City of Johannesburg v Harry Kaplan NO (in his capacity as Liquidator of Krokpark CC (in Liquidation)) & another*. [2006] S.A. 17065 (SCA)).

**3.5.12. City of Johannesburg v Renzon & Sons (Pty) Ltd; Witwatersrand High Court, 6 June 2005**

The City of Johannesburg recovered an amount owing by the owner of immovable property in respect of rates and sewerage services. The property was rateable according to Local Authorities Rating Ordinance 11 of 1977 (Transvaal). Assessment rates and sanitary charges constituted taxes contemplated in Section 11(a) of the Prescription Act, No.68 of 1969 (South Africa, 1969).

According to the City of Johannesburg the nature of sanitary charges levied is in terms of the institution of local government as a sphere of government entrenched by the Constitution. A municipality is not a mere creature of statute but enjoys constitutionally entrenched powers: Section 229(1)(a) of the Constitution confers authority on municipalities to impose rates, including sanitary services. Consideration of provisions of Local Government Ordinance 17 of 1939 (Transvaal) and the City of Johannesburg's Water Pollution Control By-laws shows that sanitary charges constitute a compulsory tax upon the property owner. A special plea of prescription of council's claim for rates and sanitary charges could not be sustained by Renzon & Sons.

Judge Jajbhay provided the following judgment:

*A tax, which may be so called or referred to by similar term such as "levy" or "duty" constitutes a pecuniary charge imposed by a public authority upon persons or property for public purposes. ...*

*The crisp question to be decided is whether such 'rates' are a form of 'taxation imposed or levied' within the meaning of this phrase in the said Section 11(a)(iii). I have no doubt they are.*

*The word 'tax' ordinarily does include rates, since rates are merely taxes of a particular kind. The shorter Oxford Dictionary Third Edition describes 'tax' as a 'compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions etc...'*

*The word 'tax' and its plural 'taxes' are not words of invaluable significance indicating any exercise whatever of the power of taxation; they are not infrequently used to denote a particular species of imposition, in contrast to duties and to duties of various kinds. Wessels held that "it seems to me, therefore, that the so called sanitary fees are really to be regarded as a statutory tariff or rate. It is neither remuneration nor price. It is a compulsory tax levied upon an owner or occupier, because the local authority in the exercise of its powers as a local government thinks that a sanitary service should be established and that the costs of such sanitary service should be defrayed by way of such a tax, either wholly or partially."*

The judge argued that the outcome of the dispute hinged on a determination of the real nature of the sanitary charges sought by the City who claimed that these charges were not fees as they were compulsory because an owner of a property does not have discretion to be linked onto the sewer network. In the event of an owner of a property not utilising this facility, such an owner must still pay the availability charges. The judge agreed with this argument.

He argued further that, with the advent of our constitutional democracy, South Africa had moved away from a hierarchical division of governmental power. The Constitution has

ushered in a new vision of government, in which the sphere of local government is interdependent, and can express its own unique character within the constraints permissible under the Constitution:

*a municipality ... enjoys "original" and constitutionally entrenched powers, functions, rights and duties that may be qualified or constrained by law and only to the extent the Constitution permits ... Its power may derive from the Constitution or Legislation of a competent authority or from its own laws.*

In terms of this judgment sanitary charge meets the definition of “compulsory” and is therefore seen as a tax with a prescription period of 30 years and not 3 years. The mere fact that water consumption is used as the basis of levying is therefore unimportant in the classification of “tax” (*City of Johannesburg v Renzon & Sons (Pty) Ltd.* [2005] J.D.R. 0682 (W)).

Judge Jajbhay presented the following test to determine what constitutes as a “tax”: it is

- compulsory not optional;
- imposed or executed by a competent authority;
- enforceable by law;
- imposed for the public benefit and public purposes; and not for a service for specific individuals, but for the service to the public as a whole, meaning a service in the public interest.

### **3.5.13. Mazibuko and others v City of Johannesburg and others; Constitutional Court of South Africa, 8 October 2009**

This case refers to the proper interpretation of Section 27(1) (b) of the Constitution (South Africa, 1996) which provides that everyone has the right to have access to sufficient water. Cultures in all parts of the world acknowledge the importance of water as water sustains life. Human beings therefore need water to drink, to cook, to wash etc. Although rain falls everywhere, access to piped water is at a cost. Mazibuko and others were residents in Phiri, an area of Soweto, Gauteng Province, and received water via a pre-paid water meter. They challenged the legality of these pre-paid meters in terms of Section 27(1)(b) of the Constitution.

The case concerned two major issues: first, whether the City’s policy in relation to the supply of free basic water and, particularly, its decision to supply 6 kilolitres of free water per month to every account holder in the city, was in conflict with Section 27 of the Constitution or

Section 11 of the Water Services Act, No.108 of 1997 (South Africa, 1997b); and secondly, whether the installation of pre-paid water meters in Phiri, Soweto was lawful.

With regard to the installation of a pre-paid water meter, Judge O'Regan of the Constitutional Court, concluded that neither the free basic water policy nor the introduction of pre-paid water meters in Phiri constituted a breach of Section 27 of the Constitution (*Mazibuko and others v City of Johannesburg and others*. [2009] S.A. 1 (CC)).

Flowing from this judgment municipalities can continue to install pre-paid water meters. Although the judgement did not make direct reference to the amount of free basic kilolitres of water, municipalities must ensure that the provision of free services are in line with national government guidelines and initiatives and that such an approach be incorporated in the credit control and debt collection policy.

The guidelines are to be found in Regulation 3(b) made in terms of Water Services Act, 1997) which stipulates the minimum basic supply of water as 25 litres per person per day, or 6 kilolitres per household per month.

### **3.5.14.Dadoo Ltd.and others v Krugersdorp Municipality Council; Court of Appeal, 24 February 1920**

An 1886 law prohibited Asians from owing immovable property in the then Transvaal. In 1915 Dadoo Ltd. was established and registered in the Transvaal, with the total shares being held by Asians. According to its Memorandum of Association, the objects of the company were the acquisition of, and traffic in, landed property, and the conduct of any business connected with these properties. The company purchased and received transfer of two stands situated within the municipality of Krugersdorp. One was leased for business purposes with an Asian manager. In 1919 the municipal council of Krugersdorp obtained an order setting aside the transfer of these properties as being *in fraudem legis* and therefore contrary to the law. Dadoo Ltd. argued that the provisions of the 1886 law did not apply to joint stock companies, even where the shares were held by Asians or coloured persons, and that, therefore, the transfer of the properties was not *in fraudem legis* and the order should not have been granted.

Judge Innes wrote in his judgment (*Dadoo Ltd. and others v Krugersdorp Municipal Council*. [1920] A.D. 530),

*I do not pause to discuss the question of the extent to which a departure would give effect to the policy and object contemplated. I do not pause to discuss the question of the extent to*

*which a departure from the ordinary meaning of the language is justified, because the construction of the statutory clauses before us is not in controversy. They are plain and unambiguous. But there must, of course, be a limit to such departure. A judge has authority to interpret, but not legislate, and he cannot do violence to the language of the lawgiver by placing upon it a meaning of which it is not reasonably capable or object of the measure.*

Local authorities need to align with existing legislation and under no circumstances must consideration be given to ‘replacing’ or ‘creating’ new legislation.

**3.5.15. Jafta v Schoeman and others;  
Constitutional Court of South Africa, 8 October 2004**

Jafta’s property was sold in execution due to non-payment and in the process the property was transferred to Schoeman after the required legal process. Jafta on the other hand relied on his constitutional right to adequate housing and requested the court to re-allocate the property and declare the allocation to Schoeman, as part of the process of sale in execution, as illegal and unconstitutional.

Judge Mokgoro, on behalf of the Constitutional Court, wrote

*The importance of access to adequate housing and its link to the inherent dignity of a person, has been well emphasised by this Court. ... In the present matter access to adequate housing already exists. Relative to homelessness, to have a home one calls one’s own, even under the most basic circumstances, can be a most empowering and dignifying human experience. The impugned provisions have the potential of undermining that experience. The provisions take indigent people who have already benefited from housing subsidies and, worse than placing them at the back of the queue to benefit again from such subsidies in the future, put them in a position where they might never again acquire such assistance, without which they may be rendered homeless and never able to restore the conditions for human dignity. Section 66(1)(a) is therefore a severe limitation of an important right.*

*It is difficult to see how the collection of trifling debts in this case can be sufficiently compelling to allow existing access to adequate housing to be totally eradicated, possibly permanently, especially where other methods exist to enable recovery of the debt. This is not to say that every sale in execution to satisfy a trifling debt will be unreasonable and unjustifiable. There are a number of difficulties with such a conclusion. In the first place, it is not easy to adopt a uniform definition of the concept of a “trifling debt”. What might seem trifling to an affluent observer might not be trifling to a poor creditor reliant on his or her ability to recover debts. Indeed, not all creditors are affluent and to many who use the execution process, it constitutes the only mechanism to recover outstanding debts.*

*Another difficulty is that there may be other factors which militate against a finding that execution is unjustifiable. Such factors will vary according to the facts of each case. The interests of creditors must not be overlooked. It is in this sense that a consideration of the legitimacy of a sale in execution must be seen as a balancing process.*

*However, it is clear that there will be circumstances in which it will be unjustifiable to allow execution. There will be many instances where execution will be unjustifiable because the advantage that attaches to a creditor who seeks execution will be far outweighed by the immense prejudice and hardship caused to the debtor. Besides, the facts of this case also demonstrate the potential of the Section 66(1) (a) process to be abused by unscrupulous people who take advantage of the lack of knowledge and information of debtors similarly situated to the appellants. Execution in these circumstances will also be unjustifiable.*

*The section is therefore sufficiently broad to allow sales in execution to proceed in circumstances where it would not be justifiable for them to be permitted. The appellants have argued that the obligation not to interfere with pre-existing rights under Section 26(1) attaches to everyone, not only to the state. In the light of the conclusion I have reached, it is not necessary to consider this argument (Jaftha v Schoeman and others. [2005] S.A. 140 (CC)).*

It is clear, amongst other issues, that a beneficiary of a government-related housing scheme will fall within the context of “given access to adequate housing” and therefore the Constitutional Court ruled in favour of Jafta. This is of importance as the sale in execution of such properties will be unconstitutional and ultimately will be categorised as wasteful expenditure.

### **3.5.16.Mkhize v Umvoti Municipality and others; KwaZulu-Natal High, Court,21 May 2010**

This case was presented to the KwaZulu-Natal High court based on the judgment in *Jaftha v Schoeman*. Mkhize argued that the property also be given back to him based on the outcomes of the *Jaftha* judgment.

Judge Wallis ruled as follows:

*In my view the orders made by the Constitutional Court should be construed as applying only when the immovable property in respect of which execution is sought is the debtor’s home. That is a necessary inference from reading them in the context of the judgment as a whole. Whether they should be read even more narrowly because, as the SCA pointed out in *Saunderson*, the question whether a person’s s26(1) right is potentially affected by execution against residential property is a peculiarly fact-bound enquiry, is unnecessary for me to decide.*

*If this inference is spelled out in words it is as if the orders read as follows:  
'1. The order of the High Court is set aside and replaced with the following order:  
1.1 The failure to provide judicial oversight over sales in execution against immovable property constituting the homes of judgment debtors in s66(1)(a) of the Magistrates' Courts Act 32 of 1944 is declared to be unconstitutional and invalid.  
1.2 To remedy the defect s66(1)(a) of the Magistrates' Courts Act 32 of 1944 is in such cases to be read as though the words 'a court, after consideration of all relevant circumstances, may order execution' appear before the words 'against the immovable property of the party'.'*

*In the present case, whilst the property in question is a residential property, it was not and never has been Mr Mkhize's home. There was accordingly no constitutional requirement of legal oversight before the clerk of the court issued a warrant of execution in respect of that property pursuant to the judgment obtained by the municipality and the sheriff's nulla bona return in respect of his endeavours to execute against movable property. As no other attack on the validity of the sale in execution has been pursued the proper finding is that the sale was valid and Mr Mkhize's claim under this head must fail.*

In this case Mkhize was unable to prove his right of access to adequate housing, because this particular house was not his house of choice, as indicated by Judge Wallis.

In considering this judgment (*Mkhize v Umvoti Municipality and others*. [2010] S.A. 144 (KZP)), and the judgment in *Jaftha v Schoeman (Jaftha v Schoeman and others*. [2005] S.A. 140 (CC)), every local authority will need to apply its mind in this regard before utilising sale in execution as a mechanism of collecting outstanding debt.

### **3.5.17 Jacobus Johannes Liebenberg and 86 others v Bergrivier Municipality; Supreme Court of Appeal, 1 October 2013**

Bergrivier Municipality instituted a levy applicable to farms based on a property as per the Deeds Registry Act, No. 47 of 1937 (South Africa, 1937), to a set maximum. The levy and notification and communication actions were instituted based on Constitution and transitional legislation.

Later with the introduction of the latest set of legislation the court argued as follows:

*First, the Constitution itself provides for the objects (s152) and duties (s153) of local government. It requires that national legislation be enacted for the establishment of municipalities, the determination of the criteria for distinguishing between different kinds of municipality (s155), and lays down the powers and functions of municipalities (s156). In s229, the Constitution enables a municipality to impose rates and levies, and states that the power to do so may be regulated by national legislation. Where national legislation is in place, as it was throughout the relevant years, the power to levy rates is derived from and exercised in terms of*



*that national legislation. Initially the relevant national legislation was the Transition Act, in particular s10G (7). Some of the problems arising in this case stem from the transition from the Transition Act to the national legislation referred to in the following paragraph.*

*The national legislation enacted pursuant to s229 is now to be found in four statutes. The Local Government: Municipal Structures Act 117 of 1998 (the Structures Act), in terms of which the Municipality was established, was enacted in 1998. Then followed the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), the Local Government: Municipal Finance Management Act 56 of 2003 (the Finance Act) (which came into operation on 1 July 2004) and lastly the Local Government: Municipal Property Rates Act 6 of 2004 (the Rates Act) (which came into operation on 2 July 2005).*

*The farm owners contended that the Municipality failed to comply with a number of provisions of the Transition Act, the Systems Act, the Finance Act and the Rates Act. They rely on the principle of legality that has formed the backbone of several decisions of this court and the Constitutional Court in the last decade. The principle is not in issue and I propose to say no more about it: it is accepted that when imposing rates and levies a municipality must comply with the provisions of the statutes that govern their powers and duties. The Municipality argued, however, that it acted at all times in compliance with the provisions of the statutes then in operation. In the alternative it contended that there had been substantial compliance with the requirements of the legislation and that any shortcomings did not invalidate the imposition of rates.*

The court decided that on the facts of this case, notwithstanding the lack of publication in the *Government Gazette* and/or other defects in the publication process for the years in question, the ratepayers had indeed received sufficient notification of the impending rates and found that they had hence been validly levied.

### 3.6. COMMON LAW

Common law is Roman-Dutch law, more specifically the law brought to South Africa from the province of Holland in 1652 and found principally in the writing of the writers such as Grotius, Voet and Van der Keesel (Wikipedia, 2014).

Common law may be used in the sense as the law of a country other than legislation.

The following applicable legal principles are explained hereunder:

- In duplum rule;
- Estoppel ;
- Locus standi; and

- Spoliation order.

### **3.6.1. In Duplum Rule**

One of the most important common law principles that concerns credit control and debt collection is the “in duplum” rule, meaning that interest levied on an outstanding account must not exceed the amount of the original capital (*Standard Bank of SA Ltd v Oeanate Investments (Pty) Ltd (in liquidation)*, 1997).

### **3.6.2. Estoppel**

The adopted South African estoppel was defined as follows in terms of the *Trust Bank of Africa v Eksteen*(1964(3) judgment:

- Reliance-based estoppels: This involves one party relying on something the other party has done or said;
- Estoppel by record: This frequently arises as issue/cause of action estoppels or judicial estoppel where the orders or judgment made in previous legal proceedings prevent the parties from relitigating the same issue or cause of action;
- Estoppel by deed: Where rules of evidence prevent a litigant from denying the truth of what was said or done; and
- Estoppel by silence: Estoppel that prevents a person from asserting something when he had the right and opportunity to do so earlier and such silence put another person at a disadvantage.

### **3.6.3. Locus Standi**

In the judgment of the *Wildlife Society of Southern Africa and others v Minister of Environmental Affairs and Tourism of Republic of South Africa and others*(1996(3))the key principles of locus standi were highlighted, namely:

- Locus standi is a right to address the court on a matter before it or the right to act.
- The court will not listen, of course, to a mere busybody who is interfering in things which do not concern him. But it will listen to anyone whose interests are affected by what has been done.

### **3.6.4. Spoliation Order**

The magistrate needs to confirm the following before granting a spoliation order in terms of the Magistrates Court Act, No. 32 of 1944 (South Africa, 1944): the applicant must show or tell the court that

- what was taken away is in the relevant court jurisdiction;
- he/she was the possessor (the person using what was taken);
- he/she was using the thing peacefully and undisturbed;
- the name and address of the person or people who disturbed the possession;
- the possession was taken away with force or without consent;
- it is possible for the other person to replace the possession; and
- steps were taken to restore the possession – the court will want to know what steps were taken since the possession was disturbed.

### **3.7. OTHER**

Other legislative documents that impact on the collection of monies in municipalities are:

- King Report I, II and III; and
- Batho Pele Principles.

#### **3.7.1. King Report I, II and III**

It is important to consider the King Reports (South Africa, 1994b, 2002d and 2010a) as in many instances they provide the basis for good and ethical credit control and debt collection, namely:

##### **3.7.1.1. Discipline**

Showing and practising discipline by implementing and maintaining a credit control and debt collection policy to ensure that all outstanding monies are collected.

##### **3.7.1.2. Transparency**

By recognising different sets of customers and therefore the need for different sets of collection criteria. Ensuring effective collection from those that can pay and accommodating those that cannot pay.

#### 3.7.1.3. Independence

Implementing and maintaining the credit control and debt collection policy without interference or pressure from any outside party.

#### 3.7.1.4. Accountability

Municipalities need to ensure that outstanding monies are collected effectively and efficiently; for this purpose the municipality must remain accountable towards consumers, ratepayers and citizens.

#### 3.7.1.5. Responsibility

Municipalities are responsible for ensuring enough cash to maintain and enhance service delivery.

#### 3.7.1.6. Fairness

Every consumer, ratepayer and citizen must be treated fairly in terms of the levying and collection of outstanding monies; and

#### 3.7.1.7. Social Responsibility

Municipalities must ensure collection of outstanding monies from those not paying to enforce the social responsibility of paying for receiving of goods and services.

### **3.7.2 Batho Pele Principles**

Eight principles known as the Batho Pele Principles (“people first”) were published in 1997 and prescribe the treatment of all municipal consumers, ratepayers and citizens (South Africa, 1997a). It is important that municipalities provide a credit control and debt collection services within the framework of the eight principles:

#### 3.7.2.1. Consultation

There are many ways to consult users of services, including conducting customer surveys, interviews with individual users, consultation with groups, and holding meetings with consumer representative bodies. Often more than one method of consultation will be necessary to ensure comprehensiveness and representativeness.

#### 3.7.2.2. Setting service standards

This principle reinforces the need for benchmarks to constantly measure the extent to which citizens are satisfied with the service or products they receive from departments. It also plays a critical role in the development of service delivery improvement plans to ensure a better life for all South Africans. Citizens should be involved in the development of service standards. Required are standards that are precise and measurable so that users can judge for themselves whether or not they are receiving what was promised. Some standards will cover processes, such as the length of time taken to authorize a housing claim, to issue a passport or identity document, or even to respond to letters. To achieve the goal of making South Africa globally competitive, standards should be benchmarked (where applicable) against those used internationally, taking into account South Africa's current level of development.

#### 3.7.2.3. Increasing access

One of the prime aims of Batho Pele is to provide a framework for making decisions about delivering public services to the many South Africans who do not have access to them. Batho Pele also aims to rectify the inequalities in the distribution of existing services. Access to information and services empowers citizens and creates value for money, quality services. It reduces unnecessary expenditure for citizens.

#### 3.7.2.4. Ensuring courtesy

This goes beyond a polite smile, 'please' and 'thank you'. It requires service providers to empathise with the citizens and treat them with as much consideration and respect, as they would like for themselves. The public service is committed to continuous, honest and transparent communication with citizens. This involves communication of services, products, information and problems, which may hamper or delay the efficient delivery of services to promised standards. If applied properly, the principle will help demystify the negative perceptions that citizens in general have about the attitude of the public servants.

#### 3.7.2.5. Providing information

Available information about services should be at the point of delivery, but for users who are far from the point of delivery, other arrangements will be needed. In line with the definition of customer in this document, managers and employees should regularly seek to make information about the organisation, and all other service delivery-related matters available to fellow staff members.

#### 3.7.2.6. Openness and transparency

A key aspect of openness and transparency is that the public should know more about the way national, provincial and local government institutions operate, how well they utilise the resources they consume, and who is in charge. It is anticipated that the public will take advantage of this principle and make suggestions for improvement of service delivery mechanisms, and even to make government employees accountable and responsible by raising queries with them.

#### 3.7.2.7. Redress

This principle emphasises a need to identify quickly and accurately when services are falling below the promised standard and to have procedures in place to remedy the situation. This should be done at the individual transactional level with the public, as well as at the organisational level, in relation to the entire service delivery programme. Public servants are encouraged to welcome complaints as an opportunity to improve service, and to deal with complaints so that weaknesses can be remedied quickly for the good of the citizen.

#### 3.7.2.8. Value for money

Many improvements that the public would like to see often require no additional resources and can sometimes even reduce costs. Failure to give a member of the public a simple, satisfactory explanation to an enquiry may for example, result in an incorrectly completed application form, which will cost time to rectify.

## **CHAPTER 4**

### **LOCAL BEST PRACTICES FOR REVENUE MANAGEMENT AND COLLECTION OF DEBT**

#### **4.1. INTRODUCTION**

Two of the leading (i.e. most successful debt collecting) metropolitan municipalities (City of Cape Town and Municipality of eThekweni, KwaZulu-Natal) are presented for the purpose of identifying best practices. These two metropolitan municipalities were also used by the IMFO to assist other municipalities in revenue management and effective debt collection (Blake, 2009).

The chapter concludes with an explanation of a general international theory regarding service delivery best practice.

Both Blake (2009) on behalf of the City of Cape Town and Du Plessis (2011) on behalf of the City of eThekweni provide very valuable Debt Collection initiatives, processes, procedures and policy considerations. Care must however be given not to copy and paste these initiatives, processes, procedures and policies as not one size or one approach fits every municipality. Every municipality must ensure that amongst other that policy supports the unique debt collection environment of a particular municipality.

#### **4.2. CITY OF CAPE TOWN**

The City of Cape Town's best practices are discussed under the following headings:

- Revenue Management and Debt Collection;
- Identify Fraud and Acceptable means of identification;
- Debt Management Process; and
- Debt Management Performance Management.

##### **4.2.1. Revenue Management and Debt Collection**

Blake (2009) provided a framework of 13 best practices implemented by the City of Cape Town to enhance the collection of outstanding monies; the discussion below follows this framework.

#### 4.2.1.1. Political buy-in

The first golden rule is to compile a credit control and debt collection policy as envisaged in Chapter 9 the Municipal Systems Act, 2000 (South Africa, 2000b). Municipalities need to ensure that politicians fully understand this policy and its impact. Blake (2009) proposed that workshops be held with the different political parties in the council prior to submission to the mayoral (executive) committee and council for approval.

#### 4.2.1.2. Encourage a culture of payment

Municipalities need to communicate the content of the approved credit control and debt collection policy to the public. During proposed information sessions a culture of payment must be introduced. The culture of payment can only be sustained if municipalities keep to the letter of the policy.

#### 4.2.1.3. Implementation of Enterprise Resource Planning solution

According to Blake (2009) the only way to control debt and to ensure quality control is to have a fully automated system that has the ability to control the whole collection process. Accounts must be consolidated as far as possible to ensure more effective collection of outstanding debt as per Section 102(b) of the Municipal Systems Act, 2000 (South Africa, 2000b).

#### 4.2.1.4. Cleaning of data

Ensure that data is cleansed on a continuous basis and incorporated into the daily activities of the call and contact centres.

#### 4.2.1.5. Analyse the debtors book

The age analysis of the debtors' book needs to be reviewed on a daily basis to ensure progress on efforts employed to collect outstanding debt.

#### 4.2.1.6. Collective responsibility towards debt collection

The collection of outstanding debt should be a collective effort between the administration (employees) and council (politicians). Any undue influence should be communicated to the municipal manager.



#### 4.2.1.7. Target the debt of big businesses and government first

The success of collecting outstanding debt is a targeted approach according to the Pareto principle (80/20), namely that 80% of the debt sits in 20% of the accounts (Investopedia). Blake (2009) recommends the use of 'Top Debt' and 'Big Debtors' teams, while a separate team needs to deal with all government debt. Monthly meetings need to be scheduled with officials responsible for payment. The disconnection of services to government buildings should not be excluded and invoked, if needed. Body corporate debt should be targeted by disconnecting water and introducing water stand pipes to the scheme, because in Cape Town the inconvenience to owners has proven to be a successful payment/collection method.

#### 4.2.1.8. Target staff and councillor arrears

A special team of staff is required to deal with arrears of councillors and employees. The following measures can be considered: reporting arrears to the municipal manager; deducting employee and councillor arrears from their monthly salary or allowances; deducting arrears from bonuses and promotion increases; taking disciplinary action in terms of Schedule 2 of the Municipal Systems Act, 2000 and ensuring that the payroll integrates with the billing system.

#### 4.2.1.9. Communication

A communication team must be established that will disseminate information on a regular basis to the media and the public at large, including information on credit control measures that have been implemented. Various mediums, such as messages on utility and rates bills, payslips and radio broadcasts, can be used.

#### 4.2.1.10. Supply chain management control

Municipalities need to ensure that all creditors and contractors supplying the municipality with goods and services do not owe the municipality any amount prior to any payment to the supplier.

#### 4.2.1.11. Indigent management

Municipalities need to implement sound indigent management policies, at a low cost to the administration. Such policies can include the installation by the municipality (at its own cost) of a water flow management device, reducing electricity by changing circuit breakers to 10 or

15 amps and implementation of a write-off policy or installation of pre-paid electricity meters.

#### 4.2.1.12. Contracting with owners only

All contracts for services delivery with tenants should be phased out over a period of time and all new service contracts should be only with property owners. When tenants are defaulting on their payments a common law principle can be implemented to cancel the contract with the tenant and finalise a new contract with the owner.

#### 4.2.1.13. Collecting all outstanding debt on a property from the owner

Blake (2009) proposed that municipalities implement Section 118(3) of the Systems Act, 2000 by introducing a collection system whereby no new service contracts will be signed unless debt is cleared on the property.

### **4.2.2. Identity Fraud and Acceptable Means of Identification**

Municipalities are constantly confronted with fraudsters who attempt to obtain confidential information on ratepayers, consumers and citizens. Identity theft involves criminals using a variety of methods to access personal details, which are then used to steal the person's identity. Once fraudsters are in possession of these personal details, they can apply for benefits, loans etc. under the name of the person from whom the identity was stolen. In many cases fraudsters obtain a person's personal accounts and manipulate these to their own advantage. It is important from a debt collection perspective that municipalities ensure that personal information of consumers, ratepayers and citizens remains confidential.

The City of Cape Town recognised the need for acceptable means of identification and approved regulations with regard to the "Standardisation of Acceptable Means of Identification" on 30 August 2006(City of Cape Town, 2006). The document is divided into three areas, namely:

- Natural persons (individuals);
- Legal persons; and
- Refugees.

#### 4.2.2.1. Natural persons (individuals)

The regulations provide detailed instructions on how natural persons must be identified before engagement with any business activity, including the provision of information:

- South African citizens/residents: Legal and valid South African identity document, temporary identity document, identity card, passport and/or drivers licence card; and
- Foreign nationals: valid passport containing a photograph, full names, date of birth and identity number.

#### 4.2.2.2. Legal persons

The regulations also provide instructions as to how legal persons must be identified before the provision of information and engagement with any other business activity:

- Legal incapacity and/or third party representing another individual or legal entity (including minors, executors/executrixes of deceased estates and liquidators/trustees of companies in liquidation or parties sequestrated): Identification as per South African citizen/resident, proof of authority to act and in the event of a deceased estate not having been reported, a death certificate, identity document with words “cancelled/deceased” stamped and an affidavit with reasons why the death was not reported to the Master of the High Court;
- South African Companies: Certificate of incorporation or name change, proof of authority to act and proof of identification;
- South African Close Corporations: Founding statement and certificate of incorporation, proof of authority to act and proof of identification;
- Foreign Companies: Official document from foreign regulator witnessing incorporation, proof of authority to act and proof of identification;
- Other legal persons such as clubs, associations and body corporates: Constitution or other founding document in terms of which the legal person is created, proof of authority to act and proof of identification;
- Partnerships: Partnership agreement, proof of authority to act and proof of identification;
- Trust: Main deed or founding document, letter of authority, proof of authority and proof of identification.

#### 4.2.2.3. Refugees

Refugees are identified as: A person who has been granted asylum in terms of the Refugees Act, No. 130 of 1998 (South Africa, 1998d); they must present the identity document provided to the refugee.

### **4.2.3. Debt Management Process**

Blake (2009) described the City of Cape Town's debt management process. It needs to be highlighted that the City of Cape Town is seen as one of the leaders in collecting outstanding debt and it frequently assists other municipalities in this regard. The process includes:

- Billing on daily basis with monthly invoicing;
- Due date 25 days after billing;
- Interest levying 30 days after due date;
- Warning letter 7 days after levying of interest;
- Disconnection order 14 days after warning letter;
- Final demand 7 days after disconnection order;
- Adverse credit rating 14 days after final demand;
- Summons 7 days after adverse credit rating; and
- Judgment warrant if still refusing settlement of debt.

### **4.2.4. Debt Management Performance Management**

Debt management activities must be performance managed and frequently monitored to ensure effective and efficient collection. It is of the utmost importance that the debt management performance be directly linked to the Reconstruction and Development Programme (RDP). The City of Cape Town (2010) approved a document for the purpose of performance managing the debt management function, which identified the following areas: measure in terms of the

- Service Delivery Budget Implementation Plan (SDBIP) for the host Department (Revenue) on functional and generic basis – quarterly;
- SDBIP on Branch (Debt Management) – quarterly;
- Payment ratio – monthly;
- Debt management process – monthly;
- Functional levels – weekly; and
- Cash receipts – daily.

## **4.3. CITY OF eTHEKWINI**

The best practices of eThekwini Municipality are explained in terms policy formulation:

### **4.3.1. Policy**

According to Du Plessis (2011), the following eThekwini best practices with regard to credit control policies will ensure the compilation and implementation of an effective and efficient policy:

Public support;

Policy is just;  
Sound decisions backed by solid analyses;  
Policy is relevant;  
Policy can be implemented; and  
Results can be monitored.

#### 4.3.1.1. Public support

Municipalities need to ensure the credit control and debt collection policies are supported by the majority of councillors voting during the council meeting when the proposed policy is tabled. It is also important that the normal public participation process is followed.

#### 4.3.1.2. Policy is just

It is of the utmost importance to ensure that the policy is fair, treating all citizens or categories of citizens in the same manner, and the policy is also equitable.

#### 4.3.1.3. Sound decisions backed by solid analyses

The objectives and goals of the policy must be clearly spelled out to ensure that all citizens and communities can familiarise themselves with these objectives and goals.

#### 4.3.1.4. Policy is relevant

The policy must be compiled and finalised in such a way as to ensure that issues raised by communities and/or citizens are incorporated and accordingly addressed.

#### 4.3.1.5. Policy can be implemented

The policy must be of a practical nature, feasible and with achievable goals and objectives. No “one size fit all” approach must be considered, but rather the best policy for the particular circumstances and community.

#### 4.3.1.6. Results can be monitored

Officials need to ensure that the results or consequences (positive and negative) of the policy can be monitored. All negative issues need to be addressed or changed during the next policy revision cycle to ensure that the policy remains effective and efficient.

### 4.4. SERVICE DELIVERY PERSPECTIVE (THEORETICAL APPROACH)

From a public perspective, the request is to change the generation and spending of income from an institutional to a public focus (Osborne & Gaebler, 1997). This perspective was one

of the most significant changes in the approach (theory) to government in the USA and proposes to change the focus to the customer and not the organisation (for example the municipality)(Osborne & Gaebler, 1997).

This new approach is of utmost importance to debt collection from the following two perspectives:

- Consideration of the debtor situation – different approach to indigent debtors. Accommodate those that cannot but want to pay, and collect from those that can but do not want to pay; and
- The collection of debt is to provide and enhance services and not to accommodate the organisation (bureaucracy).

Osborne and Gaebler (1997:30–226) argue that the following should be implemented or adhered to as part of the platform of best practices:

- Steering rather than rowing;
- Empowering rather than serving;
- Service delivery via competition;
- Mission driven;
- Customer versus bureaucracy;
- Outputs versus inputs;
- Earning rather than spending; and
- Prevention rather than cure.

#### **4.4.1. Steering Rather Than Rowing**

A smaller institution or authority will provide guidance instead of providing all services. From this perspective revenue generation needs to be transformed into goods and services in the most effective way by the best possible provider (Osborne & Gaebler, 1997:25–48).

#### **4.4.2. Empowering Rather Than Serving**

The current economic climate is such that it is more important to allow the public (where possible) to serve themselves rather than creating an ineffective service institution. From the perspective of limited resources, the first option would be to provide more long-term sustainability by focussing on servicing the customer, thereby enhancing their willingness to pay (Osborne & Gaebler, 1997:49–75).

#### **4.4.3. Service Delivery via Competition**

Many public institutions and authorities are characterised by very ineffective and unproductive service delivery mechanisms. Service delivery is sometimes at a high cost and does not benefit the poorest of the poor as not enough revenue is available for services. By introducing competition in the service delivery model, the cost will be at the lowest possible level, thus ensuring value for money. With more value for money, municipalities can provide more services (Osborne & Gaebler, 1997:76–107).

#### **4.4.4. Mission Driven**

An effective mission statement as guidance to collect public money will be more effective than the creation of lots of un-measurable rules. It is however important to ensure that mission be measured against the provision of needed public goods and services (Osborne & Gaebler, 1997:108–137).

#### **4.4.5. Customer versus Bureaucracy**

The collection and spending of public money must all times be to provide services to the public. The focus must not be on financing the bureaucracy, but on needed public service delivery, unless the bureaucracy needs funding for public service delivery purposes (Osborne & Gaebler, 1997:138–165).

#### **4.4.6. Outputs versus Inputs**

To ensure effective and efficient service delivery to the public, the focus must be on structuring, financing and monitoring the needed output. The focus must only be on the input for creating the correct framework to ensure the most effective output (Osborne & Gaebler, 1997:166–194).

#### **4.4.7. Earning Rather Than Spending**

Municipalities need to use a framework of available revenue to meet public demands rather than focus on expenditure needed for unaffordable projects. Many municipalities are finding themselves in financial difficulty due to uncontrolled expenditure, expenditure exceeding revenue or inability to collect outstanding monies (Osborne & Gaebler, 1997:195–218).

#### **4.4.8. Prevention Rather Than Cure**

Municipalities need to adopt an approach of prevention in terms of utilisation of revenue by eliminating potential problems and risks from the outset, as it is more expensive to rectify (cure) at a later stage (Osborne & Gaebler, 1997:219–249).



## **CHAPTER 5**

### **RESEARCH METHODOLOGY AND DESIGN**

#### **5.1.INTRODUCTION**

The research attempts to develop a framework for the effective collection of revenue and debt for South African Municipalities based on municipalities in the Western Cape. To achieve this purpose, international and local approaches were reviewed and compared to ascertain normative benchmarks. In addition, cognisance was taken of the various theories and schools of thought which underpin revenue and debt collection within the context of the South African constitutional and legislative framework. This literature review provided a basis for the research study and development and testing of the questionnaire, developed as part of the research methodology.

The chapter will explain the research purpose and objectives, which guided the design and development of the framework. The objective of the questionnaire survey was to address legislative compliance and to conduct a gap analysis of present practices and the desired situation.

Prior to the administration of the survey a focus group session was conducted with representatives, registered with a municipal finance professional body, to test the reliability of the questionnaire. The chapter will detail the design and approach of the research study, which will include an explanation of the research population, design and development of the questionnaire and the method of analyses and the interpretation of results.

#### **5.2 ACTION RESEARCH**

According to Du Plooy-Cilliers, Davis and Bezuidenhout (2014: 196) action research primarily concerns investigating problems or concerns and finding practical solutions for them. Action research requires “action within society” and that the researcher also reflects on his or her own practices. In this way the researcher is expanding on his or her understanding of the practice and also improving or changing it.

Du Plooy-Cilliers, Davis and Bezuidenhout (2014:198) highlight the following types of action research:

- Technical action research;
- Practical action research;

- Participatory action research; and
- Emancipatory action research.

For the purpose of this study the Practical action research will be utilized, comprising of the following:

- This type of action research involves studying a local problem in which the researcher is directly involved;
- It requires the identification and implementation of a plan of action; and
- Reflecting on the action is important to make suggestions to further improve the situation.

Du Plooy-Cilliers, Davis and Bezuidenhout (2014:200) propose the following phases:

- Planning;
- Action;
- Monitoring/Observing; and
- Reflection.

The researcher will utilise the steps in providing outcomes to the identified problem as per Table 5.1.

**Table 5.1 Action Research Steps**

<b>Step</b>	<b>Description</b>	<b>Link to Thesis</b>
Planning	What is the problem?	Chapter 1 – Overview provides the background to the problem of “debt collection” within the South African Municipal framework.
	Gather information to understand the problem.	Chapter 2 – Local- and Global Perspective on Debt Management provides a perspective (Local and Global) on Credit Control & Debt Collection/Management (meaning, information and

		<p>areas/problems of concern.</p> <p>From a local perspective Chapter 2 also highlights the effects of poor debt collection.</p>
	<p>Conduct literature review for further insight on different perspectives pertaining to the problem</p>	<p>Chapter 2 – Local- and Global Perspective on Debt Management (perspective &amp; best practices)</p> <p>Chapter 3 – Statutory and Legislative Framework (legal compliance)</p> <p>Chapter 4 – Local Best Practices for Revenue Management and Collection of Debt (local best practice)</p>
	<p>Select participants and focus on specific problem</p>	<p>Chapter 5 – Research Methodology and Design (Section 5.6 reflects details of participants utilised in designing and developing the questionnaire). Appendix A &amp; B reflects detail of 2(two) main participants.</p>
<p>Action</p>	<p>Identify focussed problem areas through process of analysis</p>	<p>Chapter 6 – Survey Results. All municipalities in the Western Cape were requested to partake in the research by completing the questionnaire as per Appendix C. The questionnaire was compiled based on identified areas by utilising participants.</p>

	Analyse and elect suitable action	Chapter 7 – Analysis, Findings and Conclusions. Information received from partaking municipalities was analysed, problem areas identified and potential actions documented by means of concluding remarks.
	Definition the solution	Chapter 8 – Debt Collection Guidelines and Framework. Based on the Findings and Concluding Remarks in Chapter 7 a framework was developed in terms of all applicable debt collection areas as summarised in Section 8.1. These solutions links to the questionnaire (Appendix C) by means of Table 8.1.
Monitoring/Observing	Observing	<p>Observation by means of the participants and completed questionnaires.</p> <p>Observation by means of literature study and best practices.</p> <p>Observation and monitoring by means of researcher practical experience.</p>
Reflection	Apply practical experience	The researcher utilise practical experience and knowledge of 30 years – practising in a Category a (Metropolitan Municipality), Category B

		(Local Municipality) and Category C (District Municipality) by assigning weighting to the areas and sub-areas as per Section 8.1.
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### 5.3. RESEARCH BACKGROUND

The current state of debt management, credit control and effective collection of monies due and payable is in a very poor state in the current local authority environment due to non-collection (SALGA, 2010:11).

The result of in-effective and -efficient collection of monies contributes to poor service delivery, as many local authorities lack the necessary cash to maintain existing infrastructure or be able to fund the capital cost of new infrastructure. As we saw in Chapter 1, many municipalities are presently experiencing service delivery protests in this regard.

### 5.4. PRIMARY OBJECTIVE AND SECONDARY OBJECTIVES

As part of the analyses as highlighted in Chapter 7 it was concluded that an assessment tool is needed based on a comprehensive list of assessment items and their compliance indicators, and the weightings assigned to each, according to the headings given below. This would allow individual local authorities to measure their compliance and determine areas for improvement.

The objective will therefore be to utilise the analyses and findings to compile an assessment toll based on the following areas:

- Compliance;
- Customer;
- Reporting;
- Function;
- Performance;
- Measure; and
- Structure.

Based on the above introductory link to Chapter 7, the following primary and secondary objectives were formulated for this research to achieve the purpose statement:

#### **5.4.1. Primary Objective**

The primary objective was to determine the problems experienced by municipalities regarding their ability to collect outstanding monies due and payable. This includes categorising the identified problems into a priority order to ensure that problems categorised as ‘high priority’ will be addressed first.

#### **5.4.2. Secondary Objectives**

To achieve the primary objective the following secondary objectives were formulated: to

1. Review the constitutional and legislative framework;
2. Provide a theoretical analysis of best practices, from national and international perspectives;
3. Provide findings and analyses and formalise recommendations arising from the problems identified; and
4. Develop and propose a framework for municipalities to assist in enhanced debt collection.

### **5.5. RESEARCH METHODOLOGY AND METHODS**

According to Bell (2009:1–2) three types of methods exist, namely: qualitative, quantitative and mixed. This research adopted a qualitative approach.

The survey method was used as the method of research. Bell (2009:13–14) proposes that two types of surveys can be utilised: census and questionnaire.

The questionnaire survey method was used as the method within a qualitative research paradigm, which is discussed below.

#### **5.5.1. Qualitative Methodology**

Bell (2009:1–2) identifies the following key characteristics of a qualitative approach:

- Focus on and understanding of an individual’s perceptions of the world;
- Focus on insights rather than statistical perceptions of the world;
- Qualitative research doubts whether social facts exist and questions whether a scientific approach can be used when dealing with human beings; and
- Qualitative research can easily draw on quantitative methods to compliment the qualitative approach.

### **5.5.2. Questionnaire Survey Method**

The questionnaire was used as the instrument of research. Bell (2009:144–150) highlighted the following key areas regarding questionnaires:

1. Appearance and layout;
2. Drawing a sample or using focus group(s);
3. Piloting the questionnaire;
4. Distribution and return of questionnaires; and
5. Non-response.

#### **5.5.2.1. Appearance and layout**

According to Bell (2009), the appearance and layout of the questionnaire must be neat and tidy, well-constructed and questions must be easily understandable. Questions must be carefully constructed to ensure that participants clearly understand the meaning and intention of the question.

The questionnaire was compiled bearing these pointers in mind – see Appendix C.

#### **5.5.2.2. Focus group**

Members of the IMFO were requested to comment on the questionnaire to identify shortcomings and to ascertain whether the instrument would accomplish the primary and secondary objectives of the research.

Critique provided from the focus group was used to ensure the compilation of an effective questionnaire. Representatives from the following organisations participated in the focus group:

- IMFO, national and provincial chapters;
- South African Local Government Association (SALGA), at national and provincial level;
- Multi-disciplinary debt management task team (City of Cape Town); and
- National Chief Finance Officers Metro Revenue Working Group (facilitated by the IMFO).

#### **5.5.2.3. Piloting the questionnaire**

The research population for the research study included all the Chief Finance Officers of the Western Cape municipalities as defined in Section 155(1) of the Constitution, 1996, namely:

- Category A (metropolitan municipality): “a municipality that has exclusive municipal executive and legislative authority in its area”;
- Category B (local municipality): “a municipality that shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls”; and
- Category C (district municipality): “a municipality that has municipal executive and legislative authority in an area that includes more than one municipality” (South Africa, 1996).

The full population defined above was utilised for the completion of the questionnaire.

#### 5.5.2.4. Distribution and return of questionnaire

The IMFO agreed to distribute the questionnaire (see Appendix C) to the Chief Finance Officers of all Western Cape Province municipalities.

Completed questionnaires were returned to the researcher by post, fax and email.

The questionnaire was also forwarded to all members of the IMFO for completion to enhance the process.

#### 5.5.2.5. Non response

All municipalities who did not respond before or by the return date were reminded by phone, email or through a personal visit so that all municipalities within the Western Cape could participate.

### 5.6. DESIGN AND DEVELOPMENT OF QUESTIONNAIRE

As indicated, the blank questionnaire as per Appendix C was designed and compiled by means of focus groups with the focus on legal and best practise principles and practices. The questionnaire was also designed to assess the current situation and problems in municipal debt management. The questionnaire included the following 6 sections:

#### **5.6.1. Section A - Municipal General**

Section A includes the classification and categorisation of South African municipalities – this information was important so as to group municipalities in terms of category A, B and C municipalities to adopt a different framework for each category.



### **5.6.2. Section B - Municipal Legislative**

Section B collates information to determine the level of legal compliance and the use of the legal framework for the purpose of collecting outstanding monies. No municipality can operate outside the legal framework and this section provides information to determine the level of compliance, and to identify existing problems.

### **5.6.3. Section C - Municipal Credit Control and Debt Management**

Section C determines existing debt, description of the debt collection process and various debt collection practices. It provides information on collection methods and processes to determine best practices and the identification of collection problems.

### **5.6.4. Section D - Municipal Statistical Information**

Section D provides statistical information necessary to evaluate the extent of effective and efficient debt collection practices based on collection volumes. This section also assists with information related to the calculation of the debt collection ratio, needed to understand collection successes or failures.

### **5.6.5. Section E - Debt Management/Collection Function**

Section E deals with the collection function within municipalities in terms of responsibility, structure and positions within the organisation (i.e. the municipal organogram).

### **5.6.6. Section F - Details of Person Providing Information**

Section F provides information of the person providing the information for reference and follow up purposes.

## **5.7. QUESTIONNAIRE RELIABILITY TEST**

Members of the IMFO were requested to comment on the questionnaire and their comments were included in the design and development of the questionnaire.

Information collected from the following focus groups were also used to ensure the compilation of a reliable questionnaire:

- IMFO, national and provincial chapters;
- SALGA, at national and provincial level;
- Multi-disciplinary debt management task team (City of Cape Town); and

- National Chief Finance Officers Metro Revenue Working Group (facilitated by the IMFO).

## 5.8. QUALITATIVE ANALYSES AND INTERPRETATION

According to Bell (2009) coding can be used as an interpretive technique that both organises the data and provides a means to introduce the interpretations of it into certain quantitative methods. Most coding requires the analyst to read the data and demarcate segments within it. Each segment is labelled with a “code” – usually a word or short phrase that suggests how the associated data segments inform the research objectives. After the coding process the analyst will prepare reports via a mix of summarising the prevalence of codes, discussing similarities and differences in related codes across distinct original sources or contexts, and comparing the relationship between one or more codes.

However, Bell (2009) notes the frequent criticism of the coding method is that it seeks to transform qualitative data into quantitative data, thereby draining the data of its variety, richness, and individual character. Analysts can respond to this criticism by thoroughly re-defining their definitions of codes and meshing those codes into the underlying data, to bring back some of the richness that might be absent from a mere list of codes.

The analyses were interpreted to identify the problems existing in municipalities regarding debt collection. Statistical information was compared in terms of the various categories of municipalities.

Part of the qualitative interpretation of the analyses of data was to formulate trends of good and bad practices. The reason for identifying these trends was to create a framework of best practices to support positive trends and rectify negative trends.

Bell (2009: 150–153) notes that trend analysis is one of the most often used methods in forecasting. It aims to observe and register the past performance of a certain factor and project it into the future. It involves analysis of two groups of trends, namely: quantitative, mainly based on statistical data, and qualitative, those largely concerned with social, institutional, organisational and political patterns.

## 5.9. ETHICAL CONSIDERATIONS

Gildenhuys (1991:8) indicates that ethics are important in an environment and defines ethics as “... it is typical of human beings to use normative or evaluative words such as “right” or

“wrong”, “good” or “bad”, “acceptable” or unacceptable”. With such words acts or decisions are legitimated or condemned.”

From a research perspective, it is therefore important that the research be legitimated in terms of its conduct, findings, analyses and proposals. The following inherent ethical characteristics must be included:

#### **5.9.1. Respect**

From an ethical perspective all viewpoints, arguments, observations and beliefs must be respected although the researcher might inherently differ from these perspectives.

#### **5.9.2. Confidentiality**

All inputs, information and problems provided were treated with confidentiality and at no stage was the trust relationship damaged.

#### **5.9.3. Responsibility**

All providers and information provided were treated with respect and confidentially, and the researcher acted responsibly by treating every provider and every piece of information fairly and in the same manner.

#### **5.9.4. Values**

The values of the various partaking municipalities and other role-players were recognised and providers and information were treated accordingly.

#### **5.9.5. Corruption**

The outcomes of the research and the ultimate guidelines were finalised and compiled free of any form of corruption.

#### **5.9.6. Fairness**

All role-players were treated with fairness and no discrimination was employed.

### **5.10. CONCLUSION**

The basis of the research methodology aims to provide South African municipalities with a framework of best practices to assist and enhance the collection of revenue and outstanding monies. The research intends to provide a framework which will ultimately contribute to

enhanced service delivery, ensuring the effective and efficient maintenance of services, and ensuring the provision of services to the poorest of the poor.

## CHAPTER 6

### SURVEY RESULTS

#### 6.1. INTRODUCTION

The results of the survey will be presented in this chapter according to the layout of the questionnaire.

The questionnaire was distributed to the following local authorities in the Western Cape (excluding the district municipalities, because they do not raise debt related to the provision of services), as shown in Table 6.1:

**Table 6.1: Municipal structure in the Western Cape**

<b>District/ Metro Municipality</b>	<b>Municipality</b>	<b>Type</b>
Cape Town	Cape Town	Metro
Cape Winelands	Hessequa	Local
	Stellenbosch	Local
Central Karoo	Beaufort West	Local
	Kannaland	Local
	Laingsburg	Local
	Oudtshoorn	Local
	Prince Albert	Local
Eden	Bitou	Local
	George	Local
	Knysna	Local
	Mossel Bay	Local
Overberg	Cape Agulhas	Local
	Overstrand	Local
	Swellendam	Local
	Theewaterskloof	Local
West Coast	Bergrivier	Local
	Cederberg	Local
	Matzikama	Local
	Saldanha Bay	Local
	Swartland	Local
	Witzenberg	Local
Winelands	Breede Valley	Local
	Drakenstein	Local
	Langeberg	Local

Only 10 of the 25 local authorities (40%) responded by completing the research questionnaire.

**Table 6.2: Linkages between Chapter 6 and Chapters 7 and 8**

<b>Chapters 7 and 8</b>	<b>Chapter 6</b>
Compliance	Municipal legislation: general Municipal legislation: statutory compliance Municipal legislative judgments
Customer	Outstanding debt per service Outstanding debt per customer Outstanding debt (total) Outstanding debt per process Debt collection cycle
Reporting	Outstanding debt per service Outstanding debt per customer Outstanding debt (total) Outstanding debt per process Debt collection cycle Special debt collection initiatives Municipal ratios
Function	Special debt collection initiatives Municipal ratios
Performance	Special debt collection initiatives Municipal ratios
Measure	Outstanding debt per service Outstanding debt per customer Outstanding debt (total) Outstanding debt per process Debt collection cycle Special debt collection initiatives Municipal ratios
Structure	Debt collection structure

## 6.2. MUNICIPAL LEGISLATIVE GENERAL

Municipalities were requested to indicate the existence of various policies and by-laws, as at 30 June 2013, as detailed in Table 6.3.

**Table 6.3: Existence of municipal legislation**

Policy	Existence %
Credit control and debt collection policy	100
Rates policy	100
Tariff policy	100
Availability of policies on website	100
Reporting regularly to finance portfolio or other relevant committee	100
Credit control and debt collection by law	90
Rates by-law	90
Customer or related policy	70
Customer or related by-law	70
Availability of reporting on municipal website	70
Incentive policy	20

The following positive issues were observed in terms of the sample:

Eighty percent mostly adhere to legislative compliance in terms of the existence of required policies and by-laws and

Further, 70% report on issues related to credit control and debt collection, which gets published for public information.

The following negative issues were observed in terms of the sample:

- Lack of a separate customer or related policy in 30% of the responding local authorities; and
- Lack of incentives supporting good and struggling debtors.

### 6.3. MUNICIPAL LEGISLATIVE STATUTORY COMPLIANCE

Local authorities were requested to indicate compliance with the national legislation listed, weighted and analysed in Section 3.2. Table 6.4 shows the results.

Note that Table 6.3 is sorted first on compliance, per the responding municipalities, then on weighting of the legislation; for this reason the weighting as given in Section 3.2 is not in consecutive order. Shading differentiates percentiles of compliance.

**Table 6.4: National legislation required for credit control and debt management**

Legislation	Weighting	Compliance %
Local Government: Municipal Systems Act, No. 32 of 2000	500	100
Local Government: Municipal Finance Management Act, No. 56 of 2003	400	100
Local Government: Municipal Property Rates Act, No. 6 of 2004	400	100
The Constitution of the Republic of South Africa, 1996	400	100
National Credit Act, No. 34 of 2005	300	100
Prescription Act, No. 68 of 1969	300	100
Electricity Regulations Act, No. 4 of 2006	200	100
Local Government: Municipal Structures Act, No. 117 of 1998	200	100
Promotion of Access to Information Act, No. 2 of 2000	200	100
Water Services Act, No. 108 of 1997	200	100
Consumer Protection Act, No. 68 of 2008	300	90
Income Tax Act, No. 58 of 1962	100	90
Local Government: Municipal Demarcation Act, No. 27 of 1998	100	90
Insolvency Act, No. 24 of 1936	300	80
Promotion of Administrative Justice Act, No. 3 of 2000	200	80
Deeds Registry Act, No. 47 of 1937	100	80
Disaster Management Act, No. 57 of 2002	100	80
Institution of Legal Proceedings against certain organs of the State Act, No. 40 of 2002	100	80
Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998	100	80
Sectional Titles Act, No. 95 of 1986	100	80
Magistrate Court Act, No. 32 of 1944	300	70
Interpretation Act, No. 23 of 2005	200	70
Electronic Communications and Transaction Act, No. 25 of 2002	100	70
Land Assistance Act, No. 126 of 1993	100	70
Restitution of Land Rights Act, No. 22 of 1984	100	70
Share Block Control Act, No. 59 of 1980	100	70
Supreme Court Act, No. 59 of 1959	100	70
Companies Act, No. 71 of 2008	200	60
Children's Act, No. 38 of 2005	100	60
Close Corporation Act, No. 69 of 1984	100	60
Marriage Act, No. 25 of 1961	100	60



Trust Property Control Act, No. 57 of 1988	100	60
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The following positive aspects were observed:

- 95% of the sample local authorities in the Western Cape are compliant with local government legislation; and
- 60% of the sample are compliant with other legislation.

The following negative aspects were observed:

- 40 % of local authorities in the Western Cape lack compliance to debt collection legislation.

#### 6.4. MUNICIPAL LEGISLATIVE JUDGMENTS

Local authorities were requested to indicate compliance with the judgments discussed in Section 3.5.

Each case showed compliance i.e. 100% of the responding municipalities complied with that particular case.

Therefore, on the positive side, awareness exists in 40% of Western Cape local authorities regarding the importance of judgments in the debt collection process.

However, on the negative side, *all* local authorities in the Western Cape should be compliant with applicable/relevant judgments.

#### 6.5. MONTHLY PAYMENT RATIO(S)

Local authorities were requested to provide the overall and separate service and rates payment ratio (12 month moving average) as at 30 June 2013. The following results were recorded:

- Only 40% of responding local authorities in the Western Cape were able to calculate a total payment ratio (12 month moving average) with an average collection of between 95 and 102%; and
- Only 10% of responding local authorities in the Western Cape calculated individual rates and services payment ratio (12 month moving average).

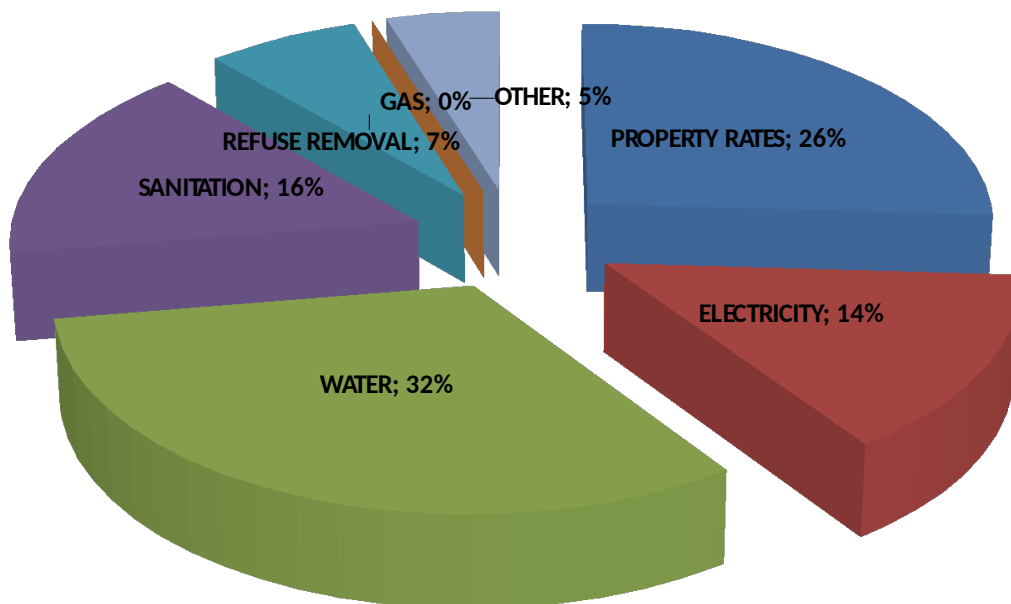
A positive observation is that the average payment ratio of 95–102% is very high and shows debt collection commitment.

However, on the negative side, *all* local authorities in the Western Cape should be able to calculate payment ratios (12 month moving average) to determine the effectiveness of debt-collection initiatives, processes and procedures.

#### 6.6. OUTSTANDING DEBT PER SERVICE AS AT 30 JUNE 2013

Local authorities were requested to provide information of outstanding debt per service as at 30 June 2013.

Figure 6.1 shows the percentage of outstanding debt per service based on the sum total of debt as provided by the 10 responding municipalities:



**Figure 6.1: Proportion of outstanding debt per service**

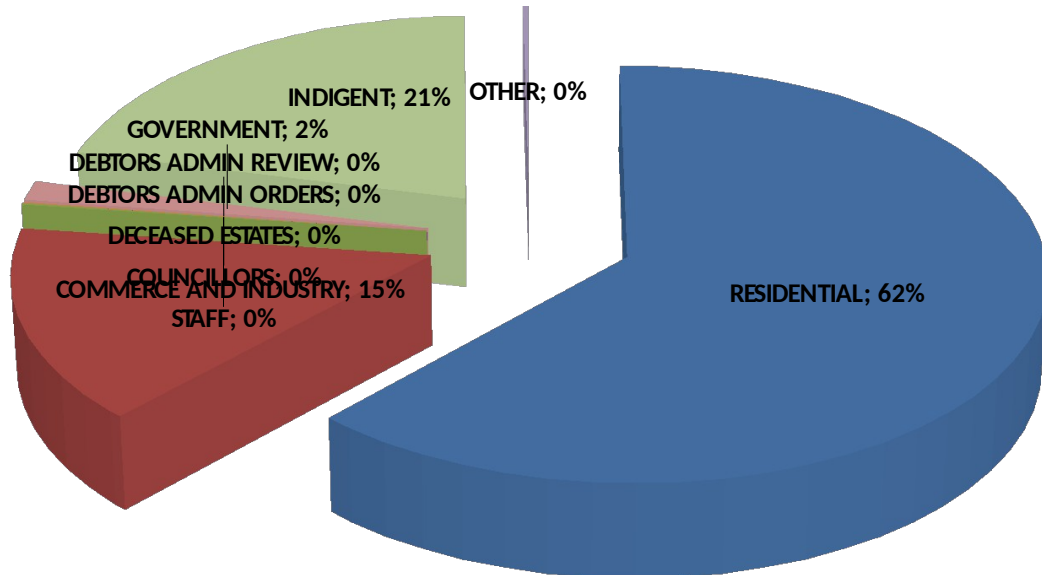
Services most accessible to debt collection, such as electricity services, seem to be under control or at least represent a lower outstanding percentage of the total debt, in the responding municipalities.

However, on the negative side, the researcher notes with concern the prevailing high outstanding debt percentage for water (32%) and rates (26%).

#### 6.7. OUTSTANDING DEBT PER CUSTOMER AS AT 30 JUNE 2013

Local authorities were requested to provide information of outstanding debt per customer as at 30 June 2013.

Figure 6.2 reflects the percentage of the outstanding debt per customer category based on the total debt to responding municipalities (the “sample debt”) of R6 853 474 423:



**Figure 6.2: Proportion of outstanding debt per customer**

On the positive side, it appears that in the sample, representing 40% of Western Cape local municipalities, government debt, and debt incurred by commerce and industry, is under control.

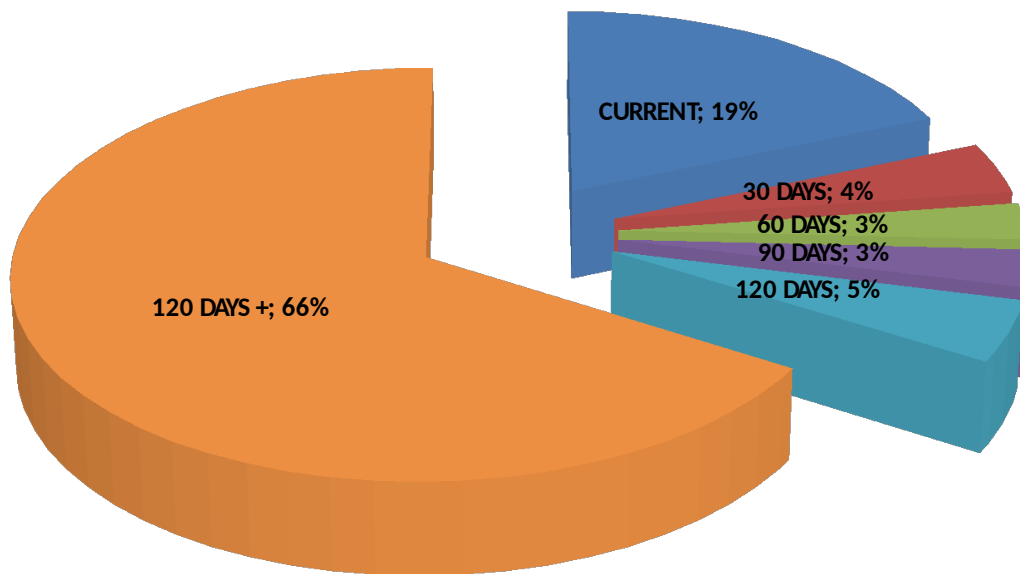
However, on the negative side, the prevailing high outstanding debt percentage for residential (62%) and indigent (mostly also residential) (21%) customers is noted with concern.

Because indigent debt can be categorised as residential, the total level of residential debtors represents 83% of the total debt.

#### 6.8. OUTSTANDING DEBT PER AGE AS AT 30 JUNE 2013

Local authorities were requested to provide information of outstanding debt per age as at 30 June 2013.

Figure 6.3 reflects the percentage of outstanding debt per age based on the sample debt of R6 853 474 423:



**Figure 6.3: Proportion of outstanding debt per age**

Short-term debt (less than 120 days), at a total of 29%, is under control in the responding municipalities. This is composed of current accounts (i.e. not yet payable), which stood at 19%, with other short-term debt amounting to a total of 10%: 30 days at 4 %; 60 days at 3% and 90 days at 3%.

However, on the negative side concern needs to be raised and recorded regarding the high outstanding percentage of debt for age categories 120 days (5%) and 120 days+ at 66%.

From this we can see that 71% (R4 865 966 840) of the sample debt is 120 days or older; clearly this has severely negative effects on the potential for service delivery.

#### 6.9. OUTSTANDING DEBT PER PROCESS AS AT 30 JUNE 2013

Local authorities were requested to provide information of outstanding debt per process as at 30 June 2013.

Only 30% of the participating local authorities calculated debt in terms of process and as such determined the amount and type of debt needs urgent focus and attention.

Thus the negative observation can be made that local authorities are unable to determine debt collection focus and/or understand the magnitude of current and planned debt-collection initiatives because of an inability to determine debt per process.

## 6.10. DEBT COLLECTION CYCLE

Local authorities were requested to provide information regarding existing debt collection cycles. Major findings were

- Not one local authority in the Western Cape follows the same debt collection cycle as another; and
- All collections start with the billing process (including interest levies) and end with some sort of legal process (handover and/or selling of assets).

Table 6.5 shows the debt-collection initiatives that were recorded:

**Table 6.5: Debt-collection initiatives**

Favourable debt-collection initiatives in terms of sample local authorities		Non-favourable debt-collection initiatives in terms of sample local authorities	
Initiative	%	Initiative	%
Handover and/or legal process	100	Blocking	40
Sending account (billing)	100	Restriction	40
Final and/or demand notices	80	Disconnection/restriction warning notice	30
Disconnection	70	Recovery of debt via pre-paid	30
		SMS	20
		Credit listing	10
		Social Assessment	10

On the positive side, all local authorities in the Western Cape apply some sort of debt collection cycle to ensure the collection of outstanding debt.

But the fact that no uniform debt collection cycle and/or approach exists gives rise to the following concerns:

- 20% of the participating local authorities apply selected debt collection methods versus the rest which follow a “holistic” approach (i.e. using all available initiatives). As certain types of debt require a different approach, selected methods might cause certain debt categories to grow beyond effective control such as rates and taxes; and
- In terms of the sample, 80% of local authorities disregard powerful and effective debt collection methods.

## 6.11. SPECIAL DEBT-COLLECTION INITIATIVES

Local authorities were requested to provide information regarding the following special (specific) debt-collection initiatives, as shown in Table 6.6.

**Table 6.6: Special debt-collection initiatives used by municipalities**

Specific debt-collection initiative	% of sample municipalities using the initiative
Collection of councillor arrears (salary deduction, debit order and/or normal debt collection)	100
Collection of government debt (reporting or formal interaction structure)	100
Collection staff arrears (salary deduction, debit order and/or normal debt collection)	100
Electricity pre-paid as collection mechanism(process and/or ad hoc)	100
Restrict consumption (disconnection, restriction and/or blocking)	100
Indigent categories and process (investigation, re-apply and blocking)	100
Sale in execution (internal and/or external)	70
Adverse credit rating defaulting customers (process and/or ad hoc)	40
Collection in terms of company rescue principle	30
Apply door to door collection principle	20
Debt payment incentives (interest rebates)	20
Apply the principle of name and shame (publishing of debt)	0

As the table shows, all local authorities in the Western Cape make use of some sort of special debt collection initiative to collect outstanding debt.

However as is shown above, no uniform debt collection cycle and/or approach exists and some local authorities are not fully using all special debt-collection initiatives to assist in debt collection.

## 6.12. MUNICIPAL RATIOS

Local authorities were requested to answer whether the following municipal ratios are calculated. Table 6.7 shows the results:

**Table 6.7: Municipalities calculating municipal ratios**

Municipal ratio	% of sample municipalities that calculate ratios
Electricity loss in distribution	60
Water loss in distribution	60
Cost coverage	30

Debt to equity	30
Cash collection	20
Cash days on hand	20
Gearing	20
Liquidity	20

Local authorities were unable to determine debt collection focus and/or understand the magnitude of current and planned debt-collection initiatives because of an inability to calculate important municipal ratios.

### 6.13. DEBT-COLLECTION STRUCTURE

Local authorities were requested to provide the following information regarding the debt-collection structure, as shown in Table 6.8:

**Table 6.8: Debt-collection structure**

Structure indicator	Response from sample municipalities
Centralised or decentralised	100%: Centralised with limited outsourcing
Directorate/department responsible for debt collection	100%: Finance department (revenue)
Number of internal staff in debt collection	100%: Staffed
Performance measure of staff: Overall as function; All staff; Head of debt collection; None	30% 40% 10% 20%
Availability of debt collection organogram On website On request	60% 40%
Performance measure of contractor and/or staff outside debt collection function Overall as service None	60% 40%

As can be seen, formal debt-collection structures do exist in Western Cape local authorities, but, overall, the responding local authorities were not performance managing staff (internal and external) and contractors effectively.

## **CHAPTER 7**

### **ANALYSIS, FINDINGS AND CONCLUSION**

#### **7.1. INTRODUCTION**

This chapter provides the nexus between the results presented and discussed in all previous chapters, and the proposed guidelines and framework as proposed in Chapter 8.

As part of the guidelines and framework, Chapter 8 provides a comprehensive list of assessment items and their compliance indicators, and the weightings assigned to each, according to the headings given at the start of this section. This would allow individual local authorities to measure their compliance and determine areas for improvement. Chapter 8 therefore enables local authorities to conduct a self-assessment of their compliance to debt collection policies, judgments and by-laws.

The findings are based on the following areas:

1. Compliance;
2. Customer;
3. Reporting;
4. Function;
5. Performance;
6. Measure; and
7. Structure.

Amongst other this Chapter gives effect to the introductory comment to the identified objectives as highlighted in Chapter 5.

#### **7.2. COMPLIANCE**

As adherence to the legal framework is compulsory, it must be considered as the most important part of any debt-collection framework, approach, assessment and/or model.

The compliance framework given in Chapter 3 provided the following structural basis for debt collection compliance by local authorities:



1. National legislation;
2. Judgments;
3. Policies and by-laws;
4. Systems Act – functional requirements;
5. Systems Act – policy requirements;
6. King I, II and III principles;
7. Batho Pele principles; and
8. Common law.

It is important that all local authorities in South Africa adhere to the compliance framework by ensuring that debt collection policies and by-laws adhere to the stipulations in the legal framework, and to the Systems Act in particular; for examples of these policies, see Chapter 3.4.

In terms of the questionnaire local authorities in the Western Cape were requested to indicate compliance with the above (Appendix C – Section B). The findings were presented in Chapter 6.

As the results in Chapter 6 show, local authorities in the Western Cape are not fully compliant with this statement of adherence. In defence of these local authorities, adherence to the more important aspects of the legal framework was determined. However, it is important to note that local authorities should be 100% compliant, as compliance is compulsory.

The following areas of concern were raised as observations in Chapter 6:

1. Lacking of a customer focus (compliance) by means of a policy and/or by-law;
2. Lacking of customer incentives (compliance);
3. Non-compliance to legislation other than municipal-specific; and
4. Non-compliance to judgments.

### 7.3. CUSTOMER

The literature review in Chapter 2 raised certain customer-related issues. These were followed up in the questionnaire, where local authorities in the Western Cape were requested to indicate the existence of customer or customer-related policies and/or by-laws (Appendix

C, Section B, sub-section 1).The findings were presented under “Municipal legislative general – customer policy” in Section 6.2 above.

The following concerns were raised:

1. No focused customer-related policy and/or by-law is available in the majority of local authorities in the Western Cape; and
2. Lack of customer incentive policy and/or initiatives.

The guidelines inSection8.4address this by providing local authorities the means to determine the level of customer interaction against seven of the most basic needs of customers, namely:

1. Enquiries;
2. Business hours;
3. Payment facilities;
4. Payment methods;
5. Accounts;
6. Communication; and
7. Language.

#### 7.4. REPORTING

Finally, the importance of reporting was highlighted (Chapter 2, Section 3.3) and researched via the questionnaire (Appendix C, Section A, sub-section 1); the results were presented and discussed under “Municipal legislative general – reporting” (Section 6.2).

The findings were that local authorities in the Western Cape did report on debt collection activities, and that such information is regularly available.

Reporting plays a very important role in debt collection; and various staff levels and groupings will need different types of information from time to time. These are detailed Section8.5below, which provides a comprehensive list and weightings under the headings

- Reporting to formal structure; and
- Reporting on functionality.

This division allows individual local authorities to understand typical reporting structures and requirements within the local government scenario.

## 7.5. FUNCTION

Functionality can be considered as an important aspect in any debt-collection framework, approach, assessment and/or model. The literature review in Chapter 2 and the research identified two key areas in this regard, namely processes and procedures; and best practices.

In terms of the questionnaire (Appendix C, Section B, sub-sections 7 and 8), local authorities in the Western Cape were requested to record their current debt collection cycle and special debt-collection initiatives. The results were presented in Sections 6.10 and 6.11.

Although it is the prerogative of local authorities to decide how to give effect to compliance in terms of policies, it remains compulsory for local authorities to collect outstanding debt, as available funding for spending on service delivery is directly linked to the amount collected.

In terms of function, the following areas of concern were observed in Chapter 6:

1. Selected methods of debt collection versus holistic approach;
2. Disregarding powerful and effective collection methods;
3. Disregarding special debt-collection initiatives (best practices);
4. No equal debt collection debtor focus; and
5. No all types of debt get collected.

It is in the best interest of local authorities to support a holistic approach to debt collection, with the utilisation of special debt-collection initiatives (best practices). However not all available debt-collection initiatives, national and international, are compliant with the legal framework as detailed above.

The guidelines presented in Chapter 8.6 enable local authorities to determine if their debt collection processes and procedures allow for a holistic approach to the collection of debt, through processes and procedures and best practices.

## 7.6. PERFORMANCE

Key performance issues were identified in Section 2.3.7; these were canvassed in the questionnaire in Section D (see Appendix C, Section D, sub-sections 4 and 6). The findings were presented under “Debt-collection structure – performance measure” in Section 6.13 above.

It is important to understand that staff and/or contractors hold the key to the debt collection success of any local authority. It is therefore in the hands of these staff and contractors to give effect to legal compliance, function and structure effectively and efficiently by focussing on defaulting debtors.

The findings indicate that local authorities seem to focus predominantly on measuring successes and other key ratios, but neglect to measure performance of the key ingredient in the debt collection initiative, namely the human driver (staff and contractors).

The guidelines in Chapter 8 address this by supporting local authorities to understand who should be measured on what:

- Performance measuring – structure (Section 8.7.1);
- Performance measuring – type (Section 8.7.2).

## 7.7. MEASURE

Various measures and ratios were highlighted as indicators of debt collection effectiveness in the literature review (Section 2.3.2).

In terms of the questionnaire, local authorities in the Western Cape were requested to provide various calculations of outstanding debt (Appendix C, Section C, sub-sections 1 –6).

The findings in this regard were presented in Chapter 6 as follows:

- Monthly payment ratio(s);
- Outstanding debt per service as at 30 June 2013;
- Outstanding debt per customer as at 30 June 2013;
- Outstanding debt per age as at 30 June 2013;
- Outstanding debt per process as at 30 June 2013; and
- Municipal ratios.

The following concerns were raised:

1. Not all local authorities in the Western Cape were able to calculate payment ratios;
2. High percentage of debt related to water and rates;
3. High residential debt;
4. High percentage of debt 120 days and older;

5. Not all local authorities in the Western Cape were able to analyse debt in terms of process; and
6. Not all local authorities in the Western Cape were able to provide municipal calculated ratios.

It is of the utmost importance that local authorities apply various debt collection calculations and measures, to:

- determine if the debt collection initiatives are still on track or need change or re-direction;
- ensure the collection of all types of debt; if not, to re-focus for rectification purposes;
- ensure targets are met by means of collections (determined successes); if not, to increase or enhance debt-collection initiatives;
- identify problems and problem areas at an early stage;
- determine and calculate debt or debt collection areas that need more or fewer resources at any given time; and
- enable the generation of more cash (collections in times of emergencies or cash flow shortages).

These issues are addressed in the guidelines in Chapter 8, Sections 8.8.1 to 8.8.3, which will enable local authorities to apply and assess various available measure and ratio options.

## 7.8. PERSONNEL STRUCTURE

A local authority might be compliant in terms of the legal framework, and support a holistic functional approach as described above, but it can only be successful if an effective and efficient staffing structure (internal and/or external) exists. Personnel structure can therefore be considered as an important part in any debt-collection framework, approach, assessment and/or model.

Staff and contractors were identified as key delivery agents, responsible for the debt collection function; this was discussed in Sections 2.3.8, 2.3.9, 2.4 and 2.5 above.

In terms of the questionnaire (Appendix C, Section B, sub-sections 7 and 8), local authorities in the Western Cape were requested to record current debt collection cycles. The results were presented and discussed in Section 6.13, Debt-collection structure. All local authorities indicated the existence of a personnel structure and/or outsourced functionality.

The guidelines in Section 8.9 would enable local authorities to determine the level, standard and compliance of the available staff structure, in terms of the following indicators:

- Staff and contractors;
- Credit control and debt collection diary (linking staff and contractors to Function);  
and
- Internal and external control (determining operational successes in terms of Function).

## CHAPTER 8

### DEBT COLLECTION GUIDELINES AND FRAMEWORK

#### 8.1. INTRODUCTION

Based on the results and observations in Chapters 6 and Chapter 7, an assessment model has been developed to allow every local authority in the Western Cape:

- The ability to conduct a self-assessment to determine its own debt management status;
- A debt collection guideline that shows what should be undertaken, in terms of which functionality and the importance of these various functions; and
- A holistic debt collection framework.

The information obtained/collected via the questionnaire process (see Appendix C) as highlighted in Chapter 6 linked to the proposed guidelines and framework as highlighted in Table 8.1:

**Table 8.1: Questionnaire link to Outcomes**

Questionnaire (Appendix C)	Section	Guidelines and Framework (Chapter 8)
Section B Legislative	Municipal	Section 8.3.1 National Legislation  Section 8.3.2 Judgments  Section 8.3.3 Policies & By-laws  Section 8.3.4 Credit Control and Debt Collection/Management Function (Systems Act)  Section 8.3.5 Credit Control and Debt Collection Policy (Systems Act)  Section 8.3.6 King I, II & III  Section 8.3.7 Batho Pele Principles  Section 8.3.8 Common Law  Section 8.4.1 Enquiries (Customer Care Policy)  Section 8.4.2 Hours (Customer Care Policy)

	<p>Section 8.4.3 Payment Facilities (Customer Care policy)</p> <p>Section 8.4.4 Payment Methods (Customer Care Policy)</p> <p>Section 8.4.5 Account (Customer Care Policy)</p> <p>Section 8.4.6 Communication (Customer Care Policy)</p> <p>Section 8.4.7 Language (Customer Care Policy)</p> <p>Section 8.5.1 Reporting Formal Structures</p> <p>Section 8.5.1 Reporting on Functionality</p>
Section C Municipal Credit Control and Debt Management	<p>Section 8.9.2 Credit Control &amp; Debt Collection Diary</p> <p>Section 8.6.1 Processes and Procedures</p> <p>Section 8.6.2 Best practices</p>
Section D Municipal Statistics	<p>Section 8.8.1 Payment Ratio</p> <p>Section 8.8.2 Other Ratios</p> <p>Section 8.8.3 Age</p>
Section E Debt Collection Function	<p>Section 8.7.1 Performance Measuring Structure</p> <p>Section 8.7.2 Performance Measuring Type</p> <p>Section 8.9.1 Staff &amp; Contractors</p> <p>Section 8.9.3 Internal &amp; External Audit</p>

This debt collection assessment, guidelines and framework is structured and explained according to Table 8.2:

**Table 8.2: Structure of debt collection guidelines**

Section	Content
8.2	General
8.3	Compliance
8.4	Customer



8.5	Reporting
8.6	Function
8.7	Performance
8.8	Measure
8.9	Structure

## 8.2. GENERAL

As the proposed framework can be utilised as an assessment tool and potentially reported against in internal and external structures, this section provides valuable baseline information of a particular municipality at the start of an assessment.

**Table 8.3: Municipal baseline information**

Name of Municipality	
Date of self-assessment	
Category of municipality in terms of Section 155(1) of the Constitution	A B C
Municipal status in terms of capacity	High Medium Low
Credit Rating	
Website	
Organisational approach to credit control and debt collection	Centralised Decentralised
Credit control and debt collection status	In-house Partially outsourced Outsourced

### 8.2.1. Weighting Scoring

As the framework can be utilised as an assessment tool, the following weighting scoring based on the importance to credit control and debt collection can be used. The total weighting as per Table 8.4 is the sum total of the individual items per the various sections.

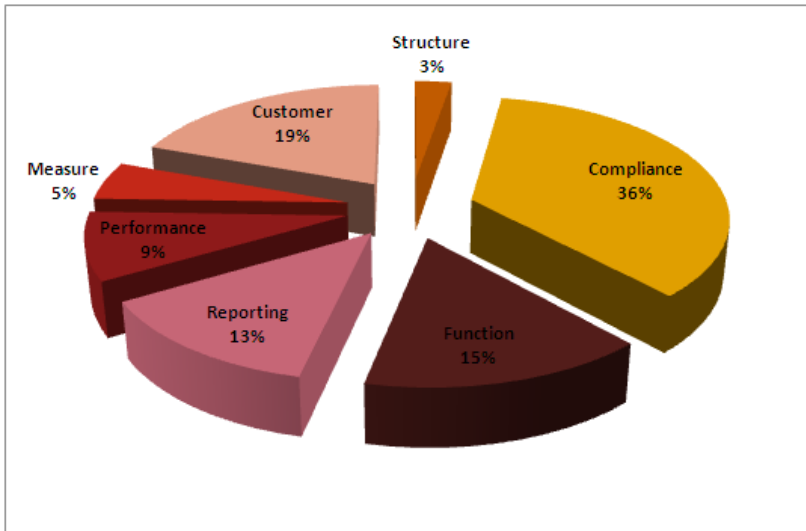
To facilitate the assessment of the municipal credit control and debt collection status, the researcher assigned a weighting on a basis of 100 – 500, based on his 30 years' experience in and knowledge of local government finance and municipal debt collection. The weighting breakdown is

- Most important = 500;
- High importance = 400;

- Mid importance = 300;
- Low importance = 200; and
- Least important = 100.

### 8.2.2. Weighting Assessment

The weighting in order of importance is shown in Figure 8.1 which is expanded in Table 8.3, and the following sections:



**Figure 8.1: Elements of assessment and weighting**

The total weighting, of 71000, of all items in the framework, can be divided as follows:

**Table 8.4: Elements of assessment and weighting**

Element for Assessment	Weighting
Compliance Municipal legislation: general Municipal legislation: statutory compliance Municipal legislative judgments	23,000
Customer Outstanding debt per service Outstanding debt per customer Outstanding debt (total) Outstanding debt per process Debt collection cycle	13,000
Reporting Outstanding debt per service Outstanding debt per customer Outstanding debt (total)	12,800

Outstanding debt per process Debt collection cycle Special debt collection initiatives Municipal ratios	
Function Special debt collection initiatives Municipal ratios	11,000
Performance Special debt collection initiatives Municipal ratios	6,000
Measure Outstanding debt per service Outstanding debt per customer Outstanding debt (total) Outstanding debt per process Debt collection cycle Special debt collection initiatives Municipal ratios	3,400
Structure Debt collection structure	1,800
<b>Total</b>	<b>71,000</b>

### 8.3. COMPLIANCE

The compliance indicators for this section include compliance against:

- National legislation;
- Judgments;
- Policies and by-laws;
- Credit control and debt collection/management functionality – Systems Act;
- Credit control and debt collection/management policy – Systems Act;
- King I, II and III principles;
- Batho Pele principles; and
- Common law principles.

#### 8.3.1. National Legislation

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.5: National legislation</b>	<b>Weighting</b>
Local Government: Municipal Systems Act, No. 32 of 2000	500
Local Government Laws Amendment Act, No.19 of 2008	400

Local Government: Municipal Finance Management Act, No.56 of 2003	400
Local Government: Municipal Property Rates Act, No.6 of 2004	400
The Constitution of the Republic of South Africa, Act 108 of 1996	400
Consumer Protection Act, No.68 of 2008	300
Insolvency Act, No.24 of 1936	300
Magistrate Court Act, No.32 of 1944	300
National Credit Act, No.34 of 2005	300
Prescription Act, No.68 of 1869	300
Companies Act, No.71 of 2008	200
Electricity Regulations Act, No.4 of 2006	200
Interpretation Act, No.23 of 2005	200
Local Government: Municipal Structures Act, No.117 of 1998	200
Promotion of Access to Information Act, No.2 of 2000	200
Promotion of Administrative Justice Act, No.3 of 2000	200
The White Paper on Local Government, 1998	200
Water Services Act, No.108 of 1997	200
Children's Act, No.38 of 2005	100
Close Corporation Act, No.69 of 1984	100
Communal Rights Act, No.11 of 2004	100
Deeds Registry Act, No.47 of 1937	100
Disaster Management Act, No.57 of 2002	100
Electronic Communications and Transactions Act, No.25 of 2002	100
Income Tax Act, 1962 No.58 of 1962	100
Institution of Legal Proceedings against Certain Organs of the State Act, No.40 of 2002	100
Land Assistance Act, No.126 of 1993	100
Local Government: Municipal Demarcation Act, No.27 of 1998	100
Local Government: Municipal Electoral Act, No. 27 of 2000	100
Marriage Act, No.25 of 1961	100
Matrimonial Property Act, No.8 of 1984	100
Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, No.19 of 1998	100
Protection of Information Act, No.84 of 1982	100
Restitution of Land Rights Act, No.22 of 1984	100
Sectional Titles Act, No.95 of 1986	100
Share Block Control Act, No.59 of 1980	100
Supreme Court Act, No.59 of 1959	100
Trust Property Control Act, No.57 of 1988	100

### 8.3.2. Judgments

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.6: Judgments</b>	<b>Weighting</b>
City of Cape Town v Real People Housing (Pty) Ltd; Supreme Court of Appeal, 30 November 2009	500
Mkontwana v Nelson Mandela Metropolitan Municipality and another; Constitutional Court of South Africa, 6 October 2004	500
Beck and others v Kopanong Local Municipality; Orange Free State High Court (Unreported), March 2002	400
Body Corporate Croftdene Mall v eThekweni Municipality; Supreme Court of Appeal, 10 October 2012	400
Hartzenberg and 8 others v Nelson Mandela Metropolitan Municipality (Despatch Administrative Unit); South East High Court, 10 September 2002	400
Joseph and others v City of Johannesburg and others; Constitutional Court of South Africa, 9 October 2009	400
Nelson Mandela Metropolitan Municipality v Nobumba NO and others; High Court of Eastern Cape, 5 November 2009	400
Rademan v Moqhaka Municipality and others; Supreme Court of Appeal, 1 December 2011	400
BOE Bank Ltd v City of Tshwane Metropolitan Municipality; Supreme Court of Appeal, 29 March 2005	300
City of Johannesburg v Even Grand 6 CC; Supreme Court of Appeal, 27 November 2008	300
City of Johannesburg v Harry Kaplan and another; Supreme Court of Appeal, 29 March 2006	300
City of Johannesburg v Renzon& Sons (Pty) Ltd; Witwatersrand High Court, 6 June 2005	300
Mazibuko and others v City of Johannesburg and others; Constitutional Court of South Africa, 8 October 2009	300
Dadoo Ltd. and others v Krugersdorp Municipality Council; Supreme Court of Appeal, 24 February 1920	200
Jafta v Schoeman and others; Constitutional Court of South Africa, 8 October 2004	200
Mkhize v Umvoti Municipality and others; KwaZulu-Natal High Court, 21 May 2010	200
Jacobus Johannes Liebenberg and 86 others v Bergrivier Municipality; Supreme Court of Appeal, 1 October 2013	100

### 8.3.3. Policies and By-Laws

For assessment use, scoring should be weighted as follows:

Approved document and published Gazette or website = 100% of weighting;

Approved document (not published) = 80% of weighting;

Draft document = 50% of weighting; and

No document = 0% of weighting.

<b>Table 8.6: Policies and by-laws</b>	<b>Weighting</b>
Credit control and debt collection (management) by-law	500
Credit control and debt collection (management) policy	500
Indigent policy	500
Customer or customer-related policy	400
Rates policy	200
Tariff policy	200
Incentive policy	100

### 8.3.4. Credit Control and Debt Collection/Management Functionality – Systems Act

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.8: Credit control and debt collection function</b>	<b>Weighting</b>
Consolidation of any separate accounts of a person liable for payments to the municipality (Section 102(1)(a))	400
Credit payment against any account of a person (Section 102(1)(b))	400
To provide accessible pay points to allow customer to settle accounts or get access to pre-payment services (Section 95(i))	400
To ensure that the measuring of services are accurate by utilising verifiable metering systems (Section 95(d))	300
To ensure the delivery of accurate accounts to customers. The basis for calculation must be reflected on the relevant account (Section 95(e))	300
To provide a mechanism of monitoring response times and effectiveness of dealing with complaints and enquiries (Section 95(h))	300
To provide a mechanism to allow enquiries regarding metered consumption, including an appeal mechanism (Section 95(f))	300
To provide an accessible complaints and enquiry mechanism for all types of customers (Section 95(g))	300

To establish a mechanism for the customer or citizen to provide feedback regarding services rendered (Section 95(b))	200
To establish a sound customer management system that creates a positive and reliable relationship between service provider (municipality or other service provider) and service receiver (customer or citizen) (Section 95(a))	200
To provide information as to the cost of services and utilisation of monies collected (Section 95(c))	200

### 8.3.5. Credit Control and Debt Collection/Management Policy – Systems Act

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.9: Debt collection policy</b>	<b>Weighting</b>
Debt collection procedures and mechanisms (Section 97(b))	400
Provision for indigent debtors that is consistent with rates and tariff policy (Section 97(c))	400
Restriction or termination of services when in arrears (Section 97(g))	400
The setting of realistic targets in terms of recognised accounting practises and collection ratios and have an acceptable provision in the estimates of income for bad debt (Sections 97(d)(i) and (ii))	400
Extension of time for payment (Section 97(f))	300
Interest on arrears (Section 97(e))	300
Credit control procedures and mechanism (Section 97(a))	200
Matters of unauthorised consumption of services, theft and damages (Section 97(h))	100

### 8.3.6. King I, II and III Principles

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.10: King I, II and III</b>	<b>Weighting</b>
Accountability	100
Discipline	100
Fairness	100
Independence	100
Responsibility	100
Social Responsibility	100
Transparency	100

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### 8.3.7. Batho Pele Principles

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.11: Batho Pele principles</b>	<b>Weighting</b>
Openness and transparency	400
Consultation	300
Setting service standards	300
Providing information	200
Ensuring courtesy	100
Increasing access	100
Redress	100
Value for money	100

### 8.3.8. Common Law

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.12: Common law</b>	<b>Weighting</b>
In duplum rule	300
Estoppel	100
Locus standi	100

## 8.4. CUSTOMER

In terms of function the following components will be applicable:

- Enquiries;
- Hours;
- Payment facilities;
- Payment methods;
- Account;
- Communication; and
- Language.



### 8.4.1. Enquiries

For assessment use, scoring should be weighted as follows:

Availability = 100% of weighting; and

Non-availability = 0% of weighting.

<b>Table 8.13: Enquiries</b>	<b>Weighting</b>
Letter	500
Telephone	500
Walk in	500
Fax	400
E-Mail	200
SMS	100
Voice	100
Web	100

### 8.4.2. Hours

For assessment use, scoring should be weighted as follows:

24/7 = 100% of weighting;

Office hours and limited after-hours = 80% of weighting; and

Office hours only = 60% of weighting.

<b>Table 8.14: Enquiries/Complaints</b>	<b>Weighting</b>
Enquiries/complaints	500

### 8.4.3. Payment Facilities

For assessment use, scoring should be weighted as follows:

Availability = 100% of weighting; and

Non-availability = 0% of weighting.

<b>Table 8.15: Payment facilities</b>	<b>Weighting</b>
Debit order	500
EFT (internet)	500
Walk in	500
Shopping centres (big 3)	400
Commercial banks (big 4)	300

Post office	200
Cellular phone	100

#### 8.4.4. Payment Methods

For assessment use, scoring should be weighted as follows:

Availability = 100% of weighting; and

Non-availability = 0% of weighting.

<b>Table 8.16: Payment methods</b>	<b>Weighting</b>
Cash	500
Cheque	500
Postal orders	500
Credit card	200
Debit card	200

#### 8.4.5. Account

For assessment use, scoring should be weighted as follows:

Availability = 100% of weighting; and

Non-availability = 0% of weighting.

<b>Table 8.17: Account</b>	<b>Weighting</b>
Duplicate account	500
Post	500
E-Mail	300
Fax	300
SMS	100

#### 8.4.6. Communication

For assessment use, scoring should be weighted as follows:

Availability = 100% of weighting; and

Non-availability = 0% of weighting.

<b>Table 8.18: Communication</b>	<b>Weighting</b>
Newsletters	400
Community meetings	300
Letters	300

Municipal account	300
Community newspapers	200
Community radio	200
E-mail	200
National newspapers	100
SMS	100
Special functions	100
Website	100

#### 8.4.7. Language

For assessment use, scoring should be weighted as follows:

All official languages (per Province) = 100% of weighting;

More than one official languages (per Province) = 80% of weighting; and

One official language (per Province) = 50%.

<b>Table 8.19: Language</b>	<b>Weighting</b>
Contact (speaking)	500
Correspondence (writing)	500
Municipal account	500
Official communication and newsletters	200

#### 8.5. REPORTING

In terms of function the following components will be applicable:

- Reporting to formal structures; and
- Reporting to functionality.

##### 8.5.1. Reporting to Formal Structures

For assessment use, scoring should be weighted as follows:

Compliant = 100% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.20: Reporting formal structures</b>	<b>Weighting</b>
Chief Finance Officer	500
Credit Control and Debt Collection/Management Committee	500

Head of Revenue	500
Municipal Manager	500
Mayor	400
Mayoral and/or Portfolio Committee	400
Speaker	400
Council	300
Credit control and debt collection staff	200
Heads of Department	200
Community and relevant stakeholders	100

### 8.5.2. Reporting on Functionality

For assessment use, scoring should be weighted as follows:

Official reporting = 100% of weighting;

Reporting e-mail and/or telephonic = 80% of weighting; and

Non-reporting = 0% of weighting.

<b>Table 8.21: Reporting functionality</b>	<b>Weighting</b>
Arrangements	500
Indigent	500
Payment ratio (12 month moving average)	500
Payment ratio (year to date)	500
Staff and councillor arrears	500
Age analysis (consolidated)	400
Analyses of debt	400
Outstanding debt (consolidated)	400
Write-off	400
Age analyses per service	300
Age analyses per ward	300
Age analysis per customer	300
Age analysis per suburb or sub-council	300
Disconnections	300
Free services	300
Government debt	300
Outstanding debt per customer	300
Outstanding debt per service	300
Outstanding debt per suburb or sub-council	300
Outstanding debt per ward	300

Restrictions	300
Debtors paying	200
Final notices/demands	200
Handovers	200
Recovery of debt via pre-paid	200
Top 10/100/1000	200
Monthly billing versus monthly payment	100

## 8.6. FUNCTION

In terms of function the following components will be applicable:

- Processes and procedures; and
- Best practices.

### 8.6.1. Processes and Procedures

For assessment use, scoring should be weighted as follows:

Approved document and published Gazette or website = 100% of weighting;

Documented = 80% of weighting;

Verbal = 40%; and

No process/procedure = 0%.

<b>Table 8.22: Debt collection processes and procedures</b>	<b>Weighting</b>
Arrangements/acknowledgement of debt	500
Blocking of pre-paid electricity purchases	500
Contact	500
Deposit management	500
Disconnection of conventional electricity	500
Final demands/notices	500
Handover of collection to debt collectors and or panel of attorneys	500
Indigent applications	500
Payments (returned cheques)	500
Sale in execution	500
Collection of debt via procurement	400
Collection of debt via rates clearances	400
Collection outstanding debt top 10/100/1000	400
Preferential customer care	400
Recovery of debt via pre-paid electricity/water system	400

Recovery of government debt	400
Staff and councillor debt and/or municipal account deduction	400
Write-off	400
Credit listing	300
De-registration of companies and close corporations	300
Water restriction	300
Credit control and debt collection management decisions	200
Debt rescue in terms of company act	200
Debt review	100
Debt payment initiatives	100
Dispute and appeal process	100
No disconnection/restriction due to medical reasons	100
Publishing of debt	100

### 8.6.2. Best Practices

For assessment use, scoring should be weighted as follows:

Utilisation = 100% of weighting; and

Not using = 0%.

<b>Table 8.23: Best practices</b>	<b>Weighting</b>
Account Managers	100
Automation	100
Cash forecasting as debt collection tool	100
Consolidated approach (inter government)	100
Face-to-face debt collection	100
Linking to IDP	100
Name-and-shame	100
One number	100
Screening customer (7 Cs)	100
Smart metering	100

### 8.7. PERFORMANCE

In terms of function the following components will be applicable:

- Performance measure – structure; and
- Performance measuring – type.

### 8.7.1. Performance Measuring – Structure

For assessment use, scoring should be weighted as follows:

Compliant official = 100% of weighting;

Compliance other = 80% of weighting; and

Non-compliant = 0% of weighting.

<b>Table 8.24: Performance measuring – structure</b>	<b>Weighting</b>
Credit control and debt collection staff	500
Financial department (centralised) or functional departments (decentralised)	500
Head credit control and debt collection	500
Head of revenue	500
Revenue and/or credit control and debt collection function	500
Executive and/or senior management	200
Organisational	100

### 8.7.2. Performance Measuring – Type

For assessment use, scoring should be weighted as follows:

Utilisation = 100% of weighting; and

Non-utilisation = 0% of weighting.

<b>Table 8.25: Performance measuring – type</b>	<b>Weighting</b>
Target/deliverable	500
Action	400
Percentage	400
Ratio	400
Time	400
Amount	300
Application	200
Process	200
Quantity	200
Contact	100
Request	100

## 8.8. MEASURE

In terms of function the following components will be applicable:

- Payment ratio;
- Other ratios; and
- Age.

### 8.8.1. Payment Ratio

For assessment use, scoring should be weighted as follows:

Payment ratio 95% + = 100% of weighting;

Payment ratio 91 – 95% = 80% of weighting;

Payment ratio 81 – 90% = 60% of weighting;

Payment ratio 61 – 80% = 40% of weighting;

Payment ratio 41 – 60% = 20% of weighting; and

Less than 41% = 0% of weighting.

<b>Table 8.26: Payment ratio</b>	<b>Weighting</b>
Payment ratio	500

### 8.8.2. Other Ratios

For assessment use, scoring should be weighted as follows:

Ratio calculated and measure against set target/norm = 100% of weighting;

Ratio calculated = 80% of weighting; and

Ratio not calculated = 0% of weighting.

<b>Table 8.27: Other ratios</b>	<b>Weighting</b>
Cost coverage ratio	400
Debt covered by own revenue	400
Net debtors to annual income	400
Cash days on hand	200
Electricity losses	200
Water losses	200
Debtors turnover days ratio	100

### 8.8.3. Age

For assessment use, scoring should be weighted as follows:



3 – 6 months = 100% of weighting;  
 7 – 9 months = 80% of weighting;  
 10 – 12 months = 60% of weighting;  
 13 – 24 months = 40% of weighting;  
 25 – 36 months = 20% of weighting; and  
 36+ = 10% of weighting.

<b>Table 8.28: Debtor age</b>	<b>Weighting</b>
Achieved collection process	500
Structured collection process	500

## 8.9. STRUCTURE

The following indicators of structural compliance are detailed below:

- Staff and contractors;
- Credit control and debt collection diary; and
- Internal and external audit.

### 8.9.1. Staff and Contractors

For assessment use, scoring should be weighted as follows:

Documented = 100% of weighting;

Verbal arrangement = 50% of weighting; and

Not available = 0% of weighting.

<b>Table 8.29: Staff and Contractors</b>	<b>Weighting</b>
Credit control and debt collection organogram	500
Job descriptions for credit control and debt collection staff, or contracts for 3 <sup>rd</sup> party providers	500
Performance measuring for credit control and debt collection staff or 3 <sup>rd</sup> party providers	300

### 8.9.2. Credit Control and Debt Collection Diary

For assessment use, scoring should be weighted as follows:

Official = 100% of weighting;

Internal arrangement = 50% of weighting; and

Not available = 0% of weighting.

<b>Table 8.30: Credit control and debt collection diary</b>	
	<b>Weighting</b>
Activities diarised	100

### **8.9.3. Internal and External Audit**

For assessment use, scoring should be weighted as follows:

Clean Audit = 100% of weighting;

Maximum 2 items (last financial year – Audit report) = 50% of weighting;

2 – 5 Items (last financial year – Audit report) = 20% of weighting; and

5+ items (last financial year – Audit report) = 0% of weighting.

Note that these four scenarios relate to both internal and external audits.

<b>Table 8.31: Internal and external audit</b>	
	<b>Weighting</b>
Internal audit	200
External audit	200

## **BIBLIOGRAPHY**

Alastair, M. 2007. *Debt Recovery in Scotland*. Online, available at <http://www.allbusiness.com> [Accessed on 1 January 2007].

Articlebase. 2010. *Debt Collection in Europe*. Online, available at <http://www.articlesbase.com> [Accessed on 5 April 2010].

Badenhorst, P. 2001. Leiding vir skeppende groei dringend nodig. *Finansies & Tegniek*, June 25.

Badenhorst, P. 2002. Trek Afrika uit die put. *Finansies & Tegniek*, March 29.

Baycorp. 2010. *Baycorp – a Debt Collection Company*. Online, available at <http://www.pleaseinterruptme.com/2010/03/baycorp> [Accessed on 18 November 2010].

*Beck and others v Kopanong Local Municipality*. Case no 3772/2002 unreported (Orange Free State).

Bekker, K. 1997. *Citizen participation in local government*. Pretoria: JL van Schaik.

Bell, J. 2009. *Doing your Research Project*. Berkshire: Open University Press.

Blake, T. 2009. *City of Cape Town Credit Control & Debt Management Best Practices*. Occasional presentation to Institute of Municipal Finance Officers, Western Cape Symposium, June 2009. Cape Town: IMFO.

*BOE Bank Ltd v City of Tshwane Metropolitan Municipality*. [2995] S.A. 21 (SCA).

Brown, L. 2010. *Five ways in improving Debt Collection*. Online, available at <http://www.profitera.com> [Accessed on 3 March 2010].

Brynard, P.A. & Hanekom, S.X. 1997. *Introduction to Research in Public Administration*. Pretoria: JL van Schaik.

Budlender, S. & Rajab-Budlender, N. *Judges in Conversation – Landmark Human Rights Cases of the Twentieth Century*. Cape Town: Juta & Co, Ltd.

Callcentrehelper.com. *Speech Analytics in Debt Collection*. Online, available at [http://www.callcenterhelpe.com/wiki/Speech\\_Analytics\\_in\\_debt\\_collection](http://www.callcenterhelpe.com/wiki/Speech_Analytics_in_debt_collection) [Accessed on 18 November 2010].

*City of Cape Town v Real People Housing (Pty) Ltd*. [2009] S.A. 196 (SCA).

City of Cape Town. 2006. *Standardisation of Acceptable Means of Identification*. City of Cape Town Council Resolution MC 24/06/06, 30 August 2006. Cape Town: City of Cape Town Publications.

City of Cape Town. 2010. *Public Housing: Current Debtor Statistics*. City of Cape Town Finance Portfolio Resolution, FIN 16/04/10, 8 April 2010. Cape Town: City of Cape Town Publications.

City of Cape Town. 2011. *Debt Management Performance Management*. Cape Town: City of Cape Town Publications.

*City of Johannesburg v Evan Grand 6 CC*. [2008] S.A. 111 (SCA).

*City of Johannesburg v Harry Kaplan NO (in his capacity as Liquidator of Krokpark CC (in Liquidation) & another*. [2006] S.A. 17065 (SCA).

*City of Johannesburg v Renzon & Sons (Pty) Ltd*. [2005] J.D.R. 0682 (W).

Cloete, F. 2001. *In pursuit of sustainable Local Financial Governance in South Africa*. Occasional paper presented at the Institute of Municipal Finance Officers, Western Cape

- Symposium, June 2001. Cape Town: IMFO.
- Dadoo Ltd and others v Krugersdorp Municipal Council*. [1920] A.D. 530.
- Datasquirt. 2011. *World Class City Council improves debt Collection at 50% lower cost with Contact*. [Online, available at http://www.datasquirt.com](http://www.datasquirt.com) [Accessed on 18 November 2010].
- Delpont, R. 1997. Plaaslike Owerhede in Oorlewingstryd. *Finansies en Tegnies*, February 7.
- Die Burger*, 1993a. Article, 16 August 1993.
- Die Burger*, 1993b. Article, November 1993.
- Die Burger*, 1994. Article, 28 November 1994;
- Die Burger*, 1995a. Article, 21 July 1995.
- Die Burger*, 1995b. Article, 11 August 1995.
- Die Burger*, 1995c. Article, 6 October 1995.
- Die Burger*, 1995d. Article, 21 October 1995.
- Die Burger*, 1995e. Article, 10 November 1995.
- Die Burger*, 1996. Article, 30 March 1996.
- Die Tyger Burger*. 1995. Article, 23 August 1995.
- Dreyer, H. 2011. *Why Revenue Management?* Occasional presentation to Institute of Municipal Finance Officers, Western Cape Workshop, February 2011. Cape Town: IMFO.
- Du Plessis, P. 2011. *Credit Control Policies*. Occasional presentation to Institute of Municipal Finance Officers, Western Cape Workshop, February 2011. Cape Town: IMFO.
- Du Plooy, F., Davis, C and Bezuidenhout, R, 2014. *Research Matter*. Claremont: Juta & Co, Ltd.
- Experian Decision Analyst. 2011. *Welsh Water Case Study*. Online, available at <http://www.experian-da.com> [Accessed on 4 May 2011].
- Fourie, L.H. 2001. A New Vision on Credit Control and Debt Management. *Institute of Municipal Finance Officers Journal*, 2(1), September.
- Fox, W. & Meyer, I.H. 1996. *Public Management Administration Dictionary*. Cape Town: Juta & Co, Ltd.
- Fox, W., Schwella, E. and Wissink, H. 2006. *A Guide to Managing Public Policy*. Cape Town: Juta & Co, Ltd.
- Gildenhuis, J.S.H. 2008. *Public Financial Management*. Pretoria: JL van Schaik.

*Hartzenberg and 8 others v Nelson Mandela Metropolitan Municipality (Despatch Administrative Unit)*. [2003] S.A. 10625 (SE).

Hoffman, P. 2010. Do ratepayers have rights? *Insight*, March 9.

IMFO *see* Institute of Municipal Finance Officers

INCA *see* Infrastructure Finance Corporation Limited

Infrastructure Finance Corporation Limited. 2006. *French Local Government 2006 Study Tour*. Unpublished Report. INCA. Braamfontein.

Institute of Municipal Finance Officers. 2009. *IMFO Handbook for Municipal Finance Officers*. Kempton Park: IMFO.

Investopedia. 2014. Pareto Principle. Online, available at <http://www.investopedia.com/terms/p/paretoprinciple.asp> [Accessed on 11 November 2014].

*Jaftha v Schoeman and others*. [2005] S.A. 140 (CC).

*Joseph and others v City of Johannesburg and others*. [2009] S.A. 55 (CC).

Jurisdiction of South African Courts and Tribunals. 2011. *A guide for the legal practitioner*. Johannesburg: Law Society of South Africa.

*Mazibuko and others v City of Johannesburg and others*. [2009] S.A. 1 (CC).

*Mkhize v Umvoti Municipality and others*. [2010] S.A. 144 (KZP).

*Mkontwana v Nelson Mandela Metropolitan Municipality and another*. [2005 (1)] S.A. 530 (CC).

Municipal IQ. 2009. *2009 Local Government Review: An Uncertain State*. Online, available at <http://www.municipalIQ.co.za> [Accessed on 15 September 2009].

*Nelson Mandela Metropolitan Municipality v Nobumba NO and others*. [2009] S.A. 579 (ECG).

Oakley, M. 2010. *CSC Delivers a Best-in-Class Debt Management Solution for Anglian Water*. Falls Church, VA: CSC.

Osborne, D. & Gaebler, T. 1997. *Reinventing Government*. New York: Addison-Wesley Publishing Company.

Pajares, F. 1997. *The elements of a proposal*. Emery University.

Pauw, J.C., Woods, G., Visser, C.B., van der Linde, G.J.A. & Fourie, D. 2009. *Managing Public Money: Systems of the South*. Sandton: Heinemann Publishers.

Pieterse, C. 1997. Banks unite to watch soaring local debt. *Local Government Chronicle*, November 21.

*Rademan v Moqhaka Municipality & others*. [2011] S.A. 244 (SCA).

Ramphele, M. 2008. *Laying Ghosts to rest – Dilemmas of the Transformation in South Africa*. Cape Town: Tafelberg.

Rothman, L. 2001. Making things happen. *Government Digest*, **19**(11): 2, June.

SALGA *see* South African Local Government Association

*Science direct*. 2006. Improving Debt Collection Processes using Rule-based Engines. Online, available at <http://www.sciencedirect.com/science> [Accessed on 18 November 2010].

Selepe, C. 1997. Cut water to pay wages. *Local Government Chronicle*, November 14.

Sharpley, G. 2001. Poverty and the Municipality. *Institute of Municipal Finance Officers Journal*, **1**(5): 25–26, May/June.

Silke, D. 1997. Local government is just a ‘facilitator’ on housing. *Local Government Chronicle*, October 31.

Singh, S. 2001. All dressed up and waiting to spend. *Financial Mail*, October 12.

South Africa. 1936. *Insolvency Act, No. 24 of 1936*. Pretoria: Government Printer.

South Africa. 1937. *Deeds Registry Act, No. 47 of 1937*. Pretoria: Government Printer.

South Africa. 1944. *Magistrates Court Act, No. 32 of 1944*. Pretoria: Government Printer.

South Africa. 1959. *Supreme Court Act, No. 59 of 1959*. Pretoria: Government Printer.

South Africa. 1961. *Marriage Act, No. 25 of 1961*. Pretoria: Government Printer.

South Africa. 1962. *Income Tax Act, No. 58 of 1962*. Pretoria: Government Printer.

South Africa. 1969. *Prescription Act, No. 68 of 1969*. Pretoria: Government Printer.

South Africa. 1980. *Share Blocks Control Act, No. 59 of 1980*. Pretoria: Government Printer.

South Africa. 1982. *Black Local Authorities Act, No. 102 of 1982*. Pretoria: Government Printer.

South Africa. 1984a. *Close Corporation Act, No. 69 of 1984*. Pretoria: Government Printer.

South Africa. 1984b. *Matrimonial Property Act, No. 88 of 1984*. Pretoria: Government Printer.

South Africa. 1984c. *Restitution of Land Rights Act, No. 22 of 1984*. Pretoria: Government Printer.

South Africa. 1986. *Sectional Titles Act, No. 95 of 1986*. Pretoria: Government Printer.

South Africa. 1988. *Trust Property Control Act, No. 57 of 1988*. Pretoria: Government Printer.

South Africa. 1993a. *Interim Constitution of the Republic of South-Africa Act, No. 200 of 1993*. Pretoria: Government Printer.

South Africa. 1993b. *Land Assistance Act, No. 126 of 1993*. Pretoria: Government Printer.

South Africa. 1993c. *Local Government: Transitional Act, No. 21 of 1993*. Pretoria: Government Printer.

South Africa. 1994a. *Kempton Park Agreement*. Pretoria: Government Printer.

South Africa. 1994b. *King Report I*. Online available at <http://www.mervynking.co.za/downloads>. [Accessed on 11 November 2014].

South Africa. 1994c. *Restitution of Land Rights Act, No. 22 of 1994*. Pretoria: Government Printer.

South Africa. 1996. *Constitution of the Republic of South Africa*. Pretoria: Government Printer.

South Africa. 1997a. *Batho Pele Principles*. Online, available at [http://www.polity.org.za/polity/govdocs/white\\_papers/transform.html](http://www.polity.org.za/polity/govdocs/white_papers/transform.html) [Accessed on 11 November 2014].

South Africa. 1997b. *Water Services Act, No. 108 of 1997*. Pretoria: Government Printer.

South Africa. 1998a. *Local Government: Demarcation Act, No. 27 of 1998*. Pretoria: Government Printer.

South Africa. 1998b. *Local Government: Municipal Structures Act, No. 117 of 1998*. Pretoria: Government Printer.

South Africa. 1998c. *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998*. Pretoria: Government Printer.

South Africa. 1998d. *Refugees Act, No. 130 of 1998*. Pretoria: Government Printer.

South Africa. 1998e. *White paper on Local Government*. Pretoria: Government Printer.

South Africa. 2000a. *Local Government: Electoral Act, No. 27 of 2000*. Pretoria: Government Printer.

South Africa. 2000b. *Local Government: Municipal Systems Act, No. 32 of 2000*. Pretoria: Government Printer.

South Africa. 2000c. *Promotion of Access to Information Act, No. 2 of 2000*. Pretoria: Government Printer.

South Africa. 2000d. *Promotion of Administrative Justice Act, No. 3 of 2000*. Pretoria: Government Printer.

South Africa. 2002a. *Disaster Management Act, No. 57 of 2002*. Pretoria: Government Printer.

South Africa. 2002b. *Electronic Communication and Transactions Act, No. 25 of 2002*. Pretoria: Government Printer.

- South Africa. 2002c. *Institution of Legal Proceedings against Certain Organs of State Act, No. 40 of 2002*. Pretoria: Government Printer.
- South Africa. 2002d. *King Report II*. Pretoria: Government Printer.
- South Africa. 2003. *Local Government: Municipal Finance Management Act, No. 56 of 2003*. Pretoria: Government Printer.
- South Africa. 2004a. *Communal Rights Act, No. 11 of 2004*. Pretoria: Government Printer.
- South Africa. 2004b. *Local Government: Municipal Property Rates Act, No. 6 of 2004*. Pretoria: Government Printer.
- South Africa. 2005a. *Children's Act, No. 38 of 2005*. Pretoria: Government Printer.
- South Africa. 2005b. *Interpretation Act, No. 23 of 2005*. Pretoria: Government Printer.
- South Africa. 2005c. *National Credit Act, No. 34 of 2005*. Pretoria: Government Printer.
- South Africa. 2006. *Electricity Regulations Act, No. 4 of 2006*. Pretoria: Government Printer.
- South Africa. 2008a. *Companies Act, No. 71 of 2008*. Pretoria: Government Printer.
- South Africa. 2008b. *Consumer Protection Act, No. 68 of 2008*. Pretoria: Government Printer.
- South Africa. 2010a. *King Report III*. Online, available at <http://www.mervynking.co.za/downloads>. [Accessed on 11 November 2014]
- South Africa. Department of Constitutional Development. 1998. *National Credit Control Guidelines*.
- South Africa. Department of Trade and Industry. 2011. *Notice to Defer the application of the Consumer Protection Act, 2008 (No.68 of 2008) to Municipalities*. Notice 34116, Vol. 549. Pretoria: Government Printer.
- South Africa. National Treasury. 2007. *Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels*. Gazette 29967, Vol. 504. Pretoria: Government Printer.
- South Africa. National Treasury. 2014. *Press Release*. Online, available at <http://www.treasury.gov.za/.../2014/2014082901%20-%20Press%20Release%2> [Accessed on 15 November 2014]
- South African Local Government Association. 2010. *SALGA Budget Book 2010/11 to 2012/13: Medium Term Revenue and Expenditure Framework (MTREF)*. Unpublished report. Pretoria: SALGA.
- Spanish Vida. 2010. *In Spain, Debt Collectors use Public Shaming to Extract Payment*. Online, available at <http://www.spanishvida.com> [Accessed on 22 February 2010].
- Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation)*. [1997] S.A. 811 (SCA).



- Sternberg, J. 2001. Options open to Municipalities on implementation of free water & reduction and control of unaccounted water. *Government Digest*, **20**(10):30–33, May.
- Taleb, N.N. 2007. *The Black Swan*. London: Penguin Books.
- Tesselaar, J.C.P. 2003. Omskepping van Kaapstad in `n Afrika Renaissance Stad. Unpublished Masters dissertation, Business School of the Netherlands, Cape Town.
- Theobald, S. 2001. A tighter grip on the bad guys. *Financial Mail*, October 26.
- Trust Bank of Africa v Eksteen*. [1964(3)] S.A. 402 (A).
- U.S. Treasury Department. 1999. *Annual Report to the Congress US Government Debt Collection Activities of Federal Agencies*. Online, available at <http://www.usgovernment.com> [Accessed on 30 September 1999].
- Ullmann, H. 2002. No place for Ageism. *The Certified Bookkeeper*, **159**(1):10, March.
- Van der Walt, G. & Du Toit, D.F.P. 2008. *Managing for Excellence in the Public Sector*. Cape Town: Juta & Co, Ltd.
- Van der Walt, G. 2004. *Managing Performance in the Public Sector – Concepts, Considerations and Challenges*. Cape Town: Juta & Co, Ltd.
- Van der Walt, G. Venter, A. & and Phutlagae, K. 2007. *Municipal Management – Serving the People*. Landsdowne: Juta & Co, Ltd.
- Welman, J.C. & Kruger, S.J. 1999. *Research Methodology for the Business and Administrative Sciences*. Halfway House: International Thompson Publishers.
- Western Cape (South Africa). Department Housing, Local Government and Planning. 1995b. *Eksterne skuld van plaaslike owerhede (insluitend grootmaat-diensteskuld)*, 14 December 1995.
- Western Cape (South Africa). Department of Housing, Local Government and Planning. 1995a. *Skulde van plaaslike owerhede en die afskryf van agterstallige dienstegelde*. Circular C18/1995, 10 July 1995.
- Western Cape (South Africa). Department of Local Government. 2010. *Generic By-Laws*. Online, available at <http://www.capegateway.gov.za/eng/pubs/E/13059> [Accessed on 25 November 2010].
- Western Cape (South Africa). Provincial Administration. 1994. *Western Cape Election Regulations*. Regulation 101 of 1994. Cape Town: Western Cape Government Printers
- Western Cape (South Africa). Provincial Administration. Branch Community Services. 1994a. *Ooreenkoms oor Finansies, Dienste en Dienslewering*. Circular C19/1994, 4 May 1994.
- Western Cape (South Africa). Provincial Administration. Branch Community Services. 1994b. *Ooreenkoms oor Finansies, Dienste en Dienslewering: Dienstegelde deur inwoners*

*verskuldig aan Plaaslike Owerhede*. Circular C42/1994, 19 August 1994.

Wikipedia: 2014. *Roman-Dutch Law*. Online, available at [http://www.wikipedia.org/wiki/Roman-Dutch\\_law](http://www.wikipedia.org/wiki/Roman-Dutch_law) [Accessed on 14 November 2014].

*Wildlife Society of Southern Africa and others v Minister of Environmental Affairs and Tourism of the Republic of South Africa and others*. [1996(3)] S.A. 1095 (TK).

Wilhelm, P. 2002. Too many people and too few jobs will test any party. *Financial Mail*, April 12.

# APPENDIX A: APPROVAL FROM THE CITY OF CAPE TOWN

## REPORT TO CITY MANAGER



CM 17-198

LC1703

### 1 SUBJECT

**RESEARCH STUDY JOHAN TESSELAAR (10903049) DOCTORATE IN TECHNOLOGY**

### 2 PURPOSE

The report intends to seek approval to utilize the Multi-Disciplinary Debt Management Task Team (MDDMTT) as a focus group regarding the research study (Doctorate in Technology) titled "Debt Management Guidelines for South African Municipalities".

### 3 DELEGATED AUTHORITY

Delegated to the City Manager for approval.

Council System of Delegations item 76 page 158 approved/amended by council 25 June 2009.

### 4 EXECUTIVE SUMMARY

Approval was granted by the Cape Peninsula University of Technology for Johan Tesselaar – Manager Debt Management (staff number 10903049) to do a research study titled "Debt Management Guidelines for South African Municipalities".

It must be noted that Mr. Johan Tesselaar will retire on 30 June 2010 and will no longer be in the service of the City of Cape Town.

As part of the proposal of the mentioned research study the City of Cape Town needs to provide approval for Mr. Tesselaar for the using of the MDDMTT as a focus group for the mentioned study.

### 5 RECOMMENDATIONS

It is recommended that Johan Tesselaar who will no longer be employed by City of Cape Town as from 01/07/2010 be provided permission to utilize the City of Cape Town Municipality as part of the research study at Cape Peninsula University of Technology titled "Debt Management Guidelines for South African Municipalities".

Research Study Johan Tesselaar (10903049) - Doctorate in Technology.doc

Page 1 of 3

[Template updated March 2010]

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31/05/10 - 15:25

**6 DISCUSSION/CONTENTS**

**6.1 Constitutional and Policy Implications**

None

**6.2 Legal Implications**

None

**6.3 Staff Implications**

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

**6.4 Risk Implications**

Does this report and/or its recommendations expose the City to any risk?

No

**6.5 Other Services Consulted**

Corporate Training

**6.6 General**

As per 4 above Johan Tesselaar needed approval by the City of Cape Town to utilize the MDDMTT as a focus group regarding the research study (Doctorate in Technology) at the Cape Peninsula University of Technology titled "Debt Management Guidelines for South African Municipalities".

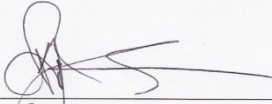
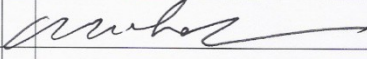

**ANNEXURES**

None



FOR FURTHER DETAILS CONTACT :

<b>NAME</b>	Trevor Blake
<b>CONTACT NUMBERS</b>	021 400-9988
<b>E-MAIL ADDRESS</b>	Trevor.Blake@capetown.gov.za
<b>DIRECTORATE</b>	Finance
<b>File Ref No</b>	711/P

		<input checked="" type="checkbox"/> Report Compliant with the provisions of Council's Delegations, Policies, By-Laws and all Legislation relating to the matter under consideration.
<b>LEGAL COMPLIANCE</b>		<input type="checkbox"/> Non-Compliant
<b>NAME</b>	JEAN ROMAN	Comment: Delegation 76 as per paragraph 3 is not applicable. Authority can be found within the provisions of sec 55(Xb) of systems Act
<b>TEL</b>	(021) 400 - 2123	
<b>DATE</b>	27/5/2010	
Comment:		
<b>EXECUTIVE DIRECTOR</b> Mike Richardson		
<b>DATE</b>	31/5/10	Supported.
Comment:		
<b>CITY MANAGER</b>		
		<input checked="" type="checkbox"/> APPROVED
		<input type="checkbox"/> REFUSED
<b>DATE</b>	02/06/2010	<input type="checkbox"/> REFERRED BACK



## APPENDIXC: QUESTIONNAIRE

### DEBT MANAGEMENT FRAMEWORK FOR SOUTH AFRICAN MUNICIPALITIES

#### QUESTIONNAIRE

##### SECTION A – MUNICIPALITY GENERAL

Name of municipality

Category of municipality in terms of Section 155 (1) of the Constitution of the Republic of South Africa, namely category A, B or C

Municipal status in terms of capacity, for example high, medium or low

Credit rating

Institution/provider responsible for calculation of credit rating

Website

SECTION B – MUNICIPAL LEGISLATIVE

Please indicate if the following existed as at 30 June 2013: *(Please indicate with tick <sup>☑</sup> )*

Credit Control and Debt Collection policy 

YES		NO	
-----	--	----	--

Credit Control and Debt collection by-law 

YES		NO	
-----	--	----	--

Rates policy 

YES		NO	
-----	--	----	--

Rates by-law 

YES		NO	
-----	--	----	--

Tariff policy 

YES		NO	
-----	--	----	--

Customer or customer related policy 

YES		NO	
-----	--	----	--

Customer or customer related by-law 

YES		NO	
-----	--	----	--

Incentive policy 

YES		NO	
-----	--	----	--

Will the policies and by-laws referred to in Section B 1 be available on your website 

YES		NO	
-----	--	----	--

If not, where will one be able to find a copy (paper or electronic)?

Are you reporting on your financial position on a regular basis to your Finance or Finance Portfolio Committee? 

YES		NO	
-----	--	----	--



Will the reporting (agendas, items & In Section B 3 be available on your website?

YES		NO	
-----	--	----	--

If not, where will one be able to find a copy (paper or electronic)?

--

Are you compliant with the following legislation?

Please indicate with tick

The Constitution of the Republic of South Africa Act, 1996

YES		NO	
-----	--	----	--

Local Government Demarcation Act, 27 of 1998

YES		NO	
-----	--	----	--

Local Government: Municipal Systems Act, 32 of 2000

YES		NO	
-----	--	----	--

Local Government: Municipal Finance Management Act, 56 of 2003

YES		NO	
-----	--	----	--

Local Government: Municipal Structures Act; 117 of 1998

YES		NO	
-----	--	----	--

Local Government: Municipal Property Rates Act, 6 of 2004

YES		NO	
-----	--	----	--

Water Services Act, 108 of 1997

YES		NO	
-----	--	----	--

Electricity Regulations Act, 4 of 2006

YES		NO	
-----	--	----	--

---

Promotion of Access of Information Act;  
2 of 2000

YES		NO	
-----	--	----	--

Promotion of Administrative Justice Act;  
Act, 3 of 2000

YES		NO	
-----	--	----	--

Interpretations Act, 33 of 1957

YES		NO	
-----	--	----	--

Prescription Act, 68 of 1969

YES		NO	
-----	--	----	--

National Credit Act, 34 of 2005

YES		NO	
-----	--	----	--

Consumer Protection Act, 68 of 2008

YES		NO	
-----	--	----	--

Companies Act, 61 of 1973

YES		NO	
-----	--	----	--

Companies Act, 71 of 2008

YES		NO	
-----	--	----	--

Close Corporations Act, 69 of 1984

YES		NO	
-----	--	----	--

Deeds Registry Act, 47 of 1937

YES		NO	
-----	--	----	--

Electronic Communications and Transactions  
Act, 25 of 2002

YES		NO	
-----	--	----	--

Income Tax Act, 58 of 1962

YES		NO	
-----	--	----	--

Institution of Legal proceedings Against  
Certain Organs of the State Act, 40 of 2000

YES		NO	
-----	--	----	--

Magistrate Court Act, 32 of 1944

YES		NO	
-----	--	----	--

Marriage Act, 25 of 1961

YES		NO	
-----	--	----	--

Prevention of Illegal Eviction from and  
Unlawful Occupation of Land Act, 19 of 1998

YES		NO	
-----	--	----	--

Protection of Information Act, 84 of 1982

YES		NO	
-----	--	----	--

Sectional Titles Act, 95 of 1998

YES		NO	
-----	--	----	--

Share Blocks Control Act, 59 of 1980

YES		NO	
-----	--	----	--

Children's Act, 38 of 2005

YES		NO	
-----	--	----	--

Supreme Court Act, 59 of 1959

YES		NO	
-----	--	----	--

Trust property Control Act, 57 of 1988

YES		NO	
-----	--	----	--

YES

NO

Prescription Act, 68 of 1969

Insolvency Act, 24 of 1936

YES		NO	
-----	--	----	--

Disaster Management Act, 57 of 2000

YES		NO	
-----	--	----	--

Trust Property Control Act, 57 of 1988

YES		NO	
-----	--	----	--

Disaster Management Act, 57 of 2000

YES		NO	
-----	--	----	--

Land Assistance; 126 of 1992

YES		NO	
-----	--	----	--

Restitution of Land Rights Act, 22 of 1994

YES		NO	
-----	--	----	--

Please indicate how you are dealing with the following judgments:

*Krugersdorp Municipality versus Dadoo;*  
*Court of Appeal, February 1920*

*Nelson Mandela Metropolitan Municipality*  
*versus Mkontwana; Constitutional Court*  
*of South Africa, October 2004*

*City of Johannesburg versus Kaplan and*  
*Others; Supreme Court of Appeal March*  
*2006*

*Nelson Mandela Metropolitan versus*  
*Nombumba; High Court of South Africa*  
*Eastern Cape, October 2009*

*City of Johannesburg versus Joseph and*  
*Others; Constitutional Court of South*  
*Africa, October 2009*

*City of Johannesburg versus Mazibuko;*  
*Constitutional Court of South Africa,*  
*October 2009*

*City of Cape Town versus Real People*

*Housing; Supreme Court of Appeal,  
November 2009*



*Jaftha versus Schoeman & others  
Constitution Court, 2004*



*Mkhize versus Umvoti  
Municipality Kwazulu-Natal High Court,  
May 2010*



*Holtzenberg and 8 others  
versus Nelson Mandela, South Case  
High Court, August 2002*



*BG Beck and others versus Kopanang  
Orange Free State, High Court  
March 2003*



*Rademan versus Moqhaka Municipality & others  
Supreme Court of Appeal December 2011*



SECTION C – MUNICIPAL CREDIT CONTROL & DEBT MANAGEMENT

Twelve (12) month moving average ratio as at 30 June 2013 for the following:

Total

Property rates

Electricity

Water

Sanitation

Refuse removal

Gas

Other

Outstanding debt as 30 June 2013 as per the following (net amount):

Total

Property rates

Electricity

Water

Sanitation

Refuse removal

Gas

Other

Number of debtors outstanding as at 30 June 2013 per the following categories:

Total



Property rates	
Electricity	
Water	
Sanitation	
Refuse removal	
Gas	
Other	

Outstanding debt as at 30 June 2013 per the following customer categories (net):

Residential	
Commerce and industry	

Internal

Staff

Councillors

Deceased estates

Debtors admin orders

Debtors admin review

Government

Indigent

Other

Outstanding debt as at 30 June 2013 per the following aging categories:

Current

30 days

60 days

90 days

120 days

150 days

210 days

240 days

270 days

300 days

330 days

360 days

360 day +

Analyses of debt (net) as at 30 June 2013 in terms of the following process:

Current

Staff arrears

Councillor arrears

Rates clearance process

Estates

Government debt

Indigent debt	
Debt Handed over	
Debt under arrangement	
Valuation objections and appeals	
Article 74 admin orders	
Debt in normal collection process	

Please provide information as to your debt collection cycle as well as the days per cycle:  
(Please add steps if needed).

Step 1: Billing	
Days	
Step 2: Action	

Days

--

Step 3: Action

--

Days

--

Step 4: Action

--

Days

--

Step 5: Action

--

Days

--

Step 6: Action

--

Days

--

Step 7: Action

--

Days

--

Step 8: Action

--

Days

--

--

Step 9: Action

Days

Step 10: Action

Days

Step 11: Action

Days

Step 12: Action

Days

Please provide information as to the following (if needed please provide on separate page):

Sale in execution  
process

--

Debt payment  
incentives

--

How do you collect outstanding staff arrears?

How do you collect outstanding councillor arrears?

Debt review process

Indigent criteria, categories and process

How do you collect outstanding government debt?



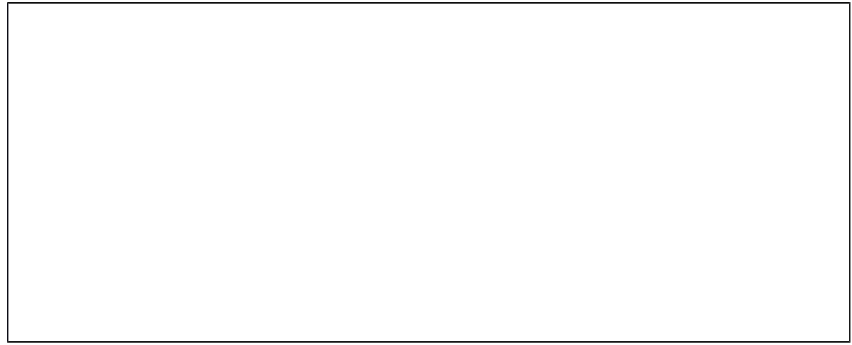
Do you use electricity pre-paid system to collect other outstanding debt?

Do you adverse credit rating customers?

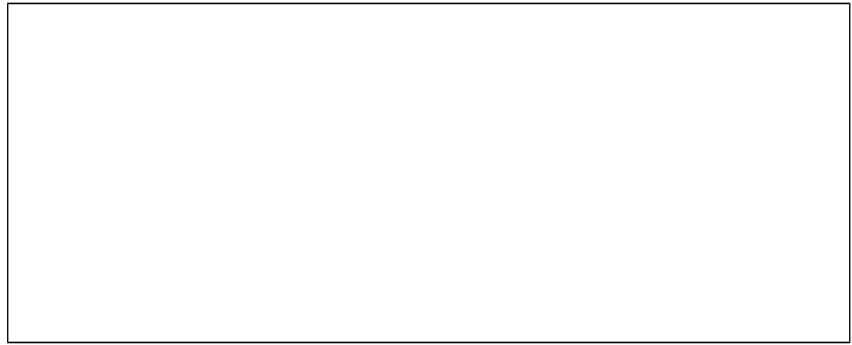
Do you use the principle of “name and shame”?

Do you collect in terms of the new “debt rescue in terms of Companies Act?

Do you collect  
outstanding debt on a  
door to door principle?

A large, empty rectangular box with a thin black border, intended for a response to the question above.

Do you collect  
outstanding debt on a  
door to door principle?

A large, empty rectangular box with a thin black border, identical to the one above, intended for a response to the question above.

SECTION D – MUNICIPAL STATISTICAL INFORMATION

Number of erven as at 30 June 2013

Number of monthly accounts delivered

Number of rates clearance certificates for period 1  
July 2012 – 30 June 2013

Number of water meters conventional

Number of electricity meters conventional

Number of electricity meters pre-paid or non-conventional

Number of water connections disconnected or restricted  
1 July 2011 – 30 June 2012:

Residential	
Other	

Number of electricity connections disconnected or restricted from 1  
July 2012 – 30 June 2013:

Residential	
-------------	--

Other

Number of customers handed over to attorney or collection agent for collection for period 1 July 2012 – 30 June 2013:

Household

Other

Please provide the following ratios as at 30 June 2013:

Cash collection

Cost coverage

Cash days on hand

Liquidity

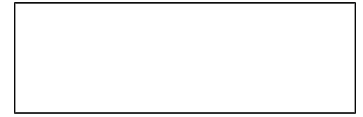
Gearing

Debt to equity

Water loss in distribution

---

Electricity loss in distribution



SECTION E – DEBT MANAGEMENT/COLLECTION FUNCTION

*Please indicate with tick <sup>☑</sup>*

Are you utilising a centralised or decentralised debt collection process?

YES		NO	
-----	--	----	--

2. Who and what directorate/department  
Is responsible for debt collection?

3. Number of internal staff in debt  
management/debt collection function

4. How do measure the individual  
performance of internal staff as per  
Section E item 3?

5. Is the Debt management/debt  
collection organogram available on your  
website?

6. How do you measure performance  
of staff/contractors responsible for  
collection (outside the internal function)?

SECTION F – DETAILS OF PERSON PROVIDING THE INFORMATION

Name and Surname

Office telephone number

Cellular number

E-mail address

Designation