



**LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO.6 OF 2004
CIRCULAR NO. 08 (ISSUED ON 19 DECEMBER 2014)**

**CIRCULAR ON THE APPLICATION OF SECTION 80 OF THE MUNICIPAL PROPERTY
RATES ACT, 2004 AND RELATED MATTERS**

Introduction

The purpose of this Circular is to provide guidance regarding application of section 80 of the Municipal Property Rates Act (“the Act”) and related matters. Section 80 of the Act allows the MEC responsible for local government, “on good cause shown, and on such conditions as the MEC may impose” to condone municipal non-compliance with a provision of the Act requiring any act to be done within a specified period or permitting any act to be done only within a specified period.

The key matters that are addressed in this Circular relate to the following:

- matters that cannot be condoned by the MEC responsible for local government;
- appropriate manner in which municipalities must make their applications to the MEC;
- appropriate manner in which the MEC, assisted by the provincial department responsible for local government, must timeously address municipal applications such that these do not compromise the implementation of a new valuation roll by the affected municipality; and

- matters that can only be addressed through an intervention in a municipality in terms of section 139 of the Constitution by the provincial executive of the affected municipality.

These matters are dealt with at length with a view of limiting risks on municipal property rates revenues.

Matters that cannot be condoned by the MEC responsible for local government

The powers of the MEC responsible for local government to condone municipal non-compliance with a provision of the Act are **not unfettered powers**. Such powers cannot be exercised in a manner that contravenes the provisions of the Act and its Regulations. Therefore, any condonation that is granted by the MEC outside the parameters of the Act and its Regulations is illegal as the MEC shall have acted *contra vires* to the powers granted to him or her by the Act and its Regulations.

Section 80(3) of the Act states that “*The powers conferred in terms of this section on an MEC for local government may only be exercised within a framework as may be prescribed*”. In addition, section 80(2) of the Act states that “*Non-compliance with section 21, 31 or 32 **may not be condoned in terms of subsection (1)***.” (Our emphasis). The words “may not” mean that the MEC has no legal powers to condone non-compliance; therefore and any action by the MEC in that regard is outright illegal and is null and void.

Furthermore, Regulation 12(3) of the Condonation Framework states that “*The condonation by the MEC for the late submission of a valuation roll to the Municipal Manager **must not result in the provisions of section 32(1)(a) of the Act not being complied with***.” Section 32(1)(a) of the Act states that “*A valuation roll takes effect from the start of the financial year following completion of the public inspection period required by section 49*”.

Regulation 12(2) of the Condonation Framework also states that an application for the condonation of the submission of a certified valuation roll to the Municipal Manager after the prescribed period (that is, by January of the year of implementation of the valuation roll) “*must be made where possible, as soon as the municipality becomes aware that it will fail to*

comply with the provisions of the period for the submission of a valuation roll. Such application must reach the MEC not later than 90 days before the date of implementation of the valuation roll". In short, the MEC must ensure that the granting of condonation to a municipality must firstly not result in the valuation roll being implemented after 1 July and secondly such condonation must not result in the completion of the inspection period for the valuation roll as provided for in section 49 not being concluded by 30 June. Should the MEC's condonation contradicts these two conditions, the affected municipality's valuation roll is null and void and can be set aside by a court of law upon litigation.

Appropriate manner in which municipalities must make their applications to the MEC to facilitate timeous decision making by the MEC

An application by a municipality to the MEC regarding non-compliance with a provision of the Act must be accompanied by a **Council resolution** which must also include the proposed implementation programme (implementation milestones) to confirm that the intended implementation date of the valuation roll will still be achieved. Based on the magnitude of the matter in question and its knock-on effect on ensuing timelines, the municipality must indicate whether it will establish a Project Steering Committee which must meet monthly and report to the appropriate Committee of the Municipality about progress made.

The composition of the Project Steering Committee should include a representative of the province, if the province will be in a position to participate. At the meetings, the Municipal Manager, Chief Financial Officer or their designated representatives as well as the designated Municipal Valuer must report against their implementation programmes. Furthermore, a report must be submitted to the province immediately after each meeting of the Project Steering Committee. The role of the province (through the MEC) is not merely to condone the non-compliance, but has also to track progress being made as well.

The MEC must respond to the application for condonation as soon after it is received as possible because a valuation roll is part of the municipal budget process which has to

adhere to stringent timeframes as set out in the Municipal Financial Management Act. The earlier the application, and the earlier the MEC's decision, the better in terms of facilitating smooth and unquestionable municipal budget process.

Upon receipt of the municipal application (which must, as alluded to earlier, reach the MEC not later than 90 days before the date of implementation of the valuation roll) the MEC has to decide whether to accept the application or approach the provincial executive to intervene in the municipality in terms of section 139 of the Constitution if the provisions of section 32(1)(a) of the Act would be violated and a provincial intervention can rescue the municipality in terms of levying rates based on its existing valuation roll if the conditions of section 32(2) and (3) of the Act hold for the municipality in question.

There are two ways in which the period of validity of a municipality's valuation roll can be extended by the MEC. These are:

- (i) In terms of section 32(2) of the Act: This is where the MEC can extend the period of validity of a municipality's valuation roll on application by a municipality for exceptional reasons or if the provincial executive has intervened in the municipality in terms of section 139 of the Constitution; and
- (ii) In terms of section 32(3): This is where a municipality fails to determine a date of valuation for its general valuation or if a municipality fails to designate a person as its municipal valuer. In this regard section 33(1) of the Act states that *"A municipality must, before the date of valuation, designate a person as municipal valuer."* The sequence of the action steps is important. A valuer must be designated before a date of valuation is determined.

If any or both the conditions mentioned in (ii) above prevail, and a provincial executive intervenes in the municipality in terms of section 139 of the Constitution **either before or after the date** on which the valuation roll will lapse or has lapsed, such a valuation roll will remain valid for one year after the date on which the roll was to lapse or has lapsed. It needs to be emphasised that the fact that the provincial executive's intervention in a municipality may happen after the valuation roll has lapsed does not mean that a municipal application must reach the MEC after the 90 days prescribed period (mentioned earlier). A provincial executive can intervene in reaction to the likely

negative consequences of the municipal application or based on its own independent information. **It is preferable for an intervention to be activated before a valuation roll expires; an intervention after a roll has lapsed questions the province's monitoring capabilities.** Effective monitoring should alert the province timeously about the high likelihood of a municipal failure in advance.

Sufficient time for conducting the public inspection of the valuation roll

Amongst others, section 49(1) requires the municipal manager to, within 21 days of receipt of a certified valuation roll from the valuer of a municipality:

- (a) publish in the prescribed form in the *Provincial Gazette*, and once a week for two consecutive weeks advertise in the media, a notice –
 - (i) stating that the roll is open for public inspection for a period stated in the notice, **which may not be less than 30 days from the date of publication of the last notice;**

Taking into account the definition of “day” in the Amendment Act (2014), the period to be reflected in the *Provincial Gazette* and the notice in the media regarding the public inspection of the valuation roll **cannot be less than 42 days** as the minimum of 30 days required by section 49(1)(a)(i) is counted with respect of the second (last) mandatory notice, whereas the opening and closing dates of the public inspection of the valuation roll have to be included in both the *Provincial Gazette* and the first media notice, and the second (last) notice as well. Municipalities are better off planning for and providing for a period of between 45-60 days for the public inspection of the valuation roll in order to cover for any unforeseeable situation. As far as ratepayers are concerned the public inspection of the valuation roll is one of the most important community participation processes, and therefore this aspect cannot be short-circuited by municipalities.

Recap on the commencement date of the valuation roll and negative consequences of failure to adhere to the legislated requirement

It must be emphasised that a valuation roll takes effect from 1 July **and not on any day thereafter** within a financial year such as 15 September or 1 December. With respect to the provisions of section 32(1)(a) of the Act, the Legislature used “*from*” deliberately in

conjunction with “*start*” to indicate the specific date from which a valuation roll becomes effective. Had it been the intention of the Legislature that a valuation roll takes effect after 1 July, the provisions of section 32(1)(a) of the Act would have read “A valuation roll takes effect “*after*”, “*during*” or “*within*” a financial year”. To implement a valuation roll on any date other than 1 July is incorrect and can be open to legal recourse by any interested party.

As it will become self-evident below, short of an intervention in terms of section 139 of the Constitution in a municipality that flouted the provisions of section 49 of the Act by the provincial executive, there is no legal remedy that can allow a municipality whose envisaged “new” valuation roll violates section 32(1)(a) of the Act to collect rates revenue in that financial year. Secondly, upon a section 139 of the Constitution intervention in the municipality, the period of validity of the existing valuation roll (if the intervention is before 30 June, however, if the intervention is after the valuation roll has expired, the valuation roll in question would be the lapsed one) is extended by statute. **The same protection cannot be granted to what was envisaged to be a “new” valuation roll whose implementation** was or will be fatally flawed on the grounds of violating the requirements of section 32(1)(a) of the Act.

In short, a valuation roll that violates the provisions of section 32(1)(a) of the Act cannot be implemented by a municipality, even if the provincial executive has intervened in that municipality in terms of section 139 of the Constitution. Thirdly, once the provincial executive intervenes in a municipality in terms of section 32(2)(a) or section 32(3) of the Act or if the MEC extends the period of validity of that municipality’s valuation roll in terms of section 32(2)(b) of the Act, the date of valuation of the envisaged “new” valuation roll must be reviewed and amended to ensure that when such a valuation roll is implemented in the following financial year, it complies fully with section 31(1) of the Act. Section 31(1) of the Act states the following:

“For the purposes of a general valuation, a municipality must determine a **date that may not be more than 12 months before the start of the financial year** in which the valuation roll is to be first implemented.” (Our emphasis)

The implication of section 31(1) of the Act is that if the public participation process for the valuation roll is not undertaken correctly resulting in the certified valuation roll not being

implementable in that financial year, that municipality will be exposed to more financial expenditure by embarking upon another process of adjusting the values of properties in the valuation roll to reflect the revised date of valuation. In this regard, Municipal Managers and Chief Financial Officers have to take note of Regulation 12(4) of the Condonation Framework, which states the following:

“Any condonation by an MEC in terms of section 80 of the Act read with this regulation may not be construed as condonation or justification of any expenditure that may be considered fruitless and wasteful expenditure incurred by a municipality in the course of performing its powers and functions in terms of this Act or any other legislation.”

Intervention by the Provincial Executive to protect the property rates revenue of a municipality

If an intervention in terms of section 139 of the Constitution is proposed, it will not (our emphasis) necessarily entail the dissolution of the municipal council. In the matter of Premier, Western Cape v Overberg District Municipality (2011 (4) SA 441 (Supreme Court of Appeals)), the Supreme Court of Appeals made the following finding regarding appropriate steps to assist municipalities:

- Section 139 of the Constitution permits and requires a provincial government to supervise the affairs of local governments and to intervene when things go awry.
- The provincial cabinet must intervene by taking appropriate steps to ensure that the municipal budget is approved.
- Dissolving the council is the most drastic step the provincial executive can take as there are less drastic means, other than to dissolve the council.
- Section 139 of the Constitution grants the provincial executive the power to take **any appropriate steps** (our emphasis) to enable the council to approve the budget.

Section 139(4) of the Constitution states that;

“If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, ...”

Section 26(1) of the Municipal Finance Management Act states that:

"If by the start of budget year a municipal council has not approved an annual budget or any revenue-raising measures necessary to give effect to the budget, the provincial executive of the relevant province must intervene in the municipality in terms of section 139 of the Constitution by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, ..."

The Constitution does not define a "*revenue-raising measure*" or "*temporary revenue-raising measures*". Therefore, as "*revenue-raising measures*" are not limited by definition, a valuation roll is an example of a revenue-raising measure. This is further evidenced by the fact that if a new valuation roll is not in good order, the income portion of a budget will be ineffective.

The Constitution does not limit the intervenor in Section 139(4) of the Constitution to provincial treasury. It states that the relevant provincial executive, as a collective, must initiate the intervention, and do whatever is necessary, in this case, to assist the municipality to complete the municipal valuation process.

Property rates revenue is part of a municipality's budget and a valuation roll is an integral component of revenue-raising measures for without a valid valuation roll being in place the rates cannot be imposed and rates revenue collected, and where things have gone awry in a municipality, a section 139 constitutional intervention by the provincial executive is the only legal remedy.

Conclusion

Diligence on the part of Municipal Managers and Chief Financial Officers, coupled with effective provincial monitoring will avert unnecessary and avoidable catastrophes on municipal budgets as the MEC's powers in terms of section 80 of the Act are very limited. The prime responsibility remains that of the municipality concerned. Condonations constitute evidence that the affected municipality's implementation of the Act is not smooth, and an intervention in a municipality in terms of section 139 of the Constitution means that the municipality has failed to discharge its duties.

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Should municipalities and provinces require any further information on matters dealt with in this Circular, request for such information should be directed to the Department of Cooperative Governance for the attention of:

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