NATIONAL TREASURY

MFMA Circular No.131

Municipal Finance Management Act No. 56 of 2003

Section 67 of the MFMA: Funds Transferred by Municipalities to Organisations and Bodies Outside the Government

Contents

1. Purpose of Circular

The purpose of this Circular is to guide municipalities on the implementation of section 67 in the Municipal Finance Management Act 56 of 2003 (MFMA) relating to instances when municipalities transfer funds to organisations or bodies outside of government, i.e. non-governmental organisations (NGOs), which also includes nonprofit organisation (NPOs). This Circular includes an Annexure, which outlines examples of instances where municipalities must follow procurement processes instead of making a transfer payment as contemplated in terms of section 67 of the MFMA. Note that the provisions of section 67 of the MFMA are not applicable to municipal entities.

2. Background

Section 67 of the MFMA outlines a process which must be followed before transferring funds to NGOs in instances where such transfers are not for the actual supply of goods or services. **Where a municipality procures goods and services, even from an NGO, it must comply with the procurement processes as required in terms of section 217 of the Constitution, read with chapter 11 of the MFMA, the Municipal Supply Chain Management (SCM) Regulations and other applicable procurement prescripts, before appointing an NGO to provide goods and services to a municipality.** Section 67 of the MFMA should, therefore, not be used as a mechanism to bypass official public sector procurement legal prescripts as it only enables municipalities to make transfers to NGOs in instances other than through the normal course of providing municipal services.

A transfer within the context of section 67 of the MFMA refers to instances where a municipality does not buy any item or pay for goods or services, regardless of whether it is in furtherance of a municipal assigned or unassigned function. Section 67 of the MFMA provides a mechanism for municipalities to make transfers to organisations or bodies outside of government, such as nonprofit organisations (which include non-governmental organisations and community-based organisations), to enable them to support projects and programmes of these organisations.

Municipalities should prioritise budgeting for sufficient service delivery municipal mandates over budgeting for unassigned functions. Irrespective of whether a municipality is performing an assigned or unassigned function, section 217 of the Constitution will apply to any procurement of goods or services in relation to the performance of the assigned or unassigned function. Therefore, section 67 of the MFMA cannot be used to procure goods and services from NGOs for unassigned functions.

In budgeting for section 67 transfers, municipalities must always take cognisance of sections 62(1)(a) of the MFMA, which stipulates that the accounting officer of a municipality is responsible for managing the financial administration of a municipality and must, for this purpose take all reasonable steps to ensure that the resources of the municipality are used effectively, efficiently and economically. Service delivery must always be prioritised.

3. Council Policy

Municipalities should develop and approve a policy to transfer funds to NGOs in terms of section 67 of the MFMA to ensure transparency and accountability. This policy must govern how a municipality will provide financial assistance to NGOs. Below are some key elements that should be addressed in a section 67 transfer policy:

- **Purpose and objectives:** Clearly state the purpose, desired outcomes, and impacts that the funding aims to achieve.

- **Eligibility criteria:** Specify the eligibility requirements for potential recipients. These criteria may include jurisdiction, project alignment with funding priorities, and compliance with legal and financial standards.
- **Application process:** Outline the process for NGOs to apply for transfer funding. This should include details on the application form, submission deadlines, and required documentation associated with the application.
- **Selection criteria:** Describe the criteria and evaluation process used to assess transfer applications. Explain how applications will be scored and selected for transfer funding.
- **Funding amounts and duration:** Specify the minimum and maximum transfer amounts that can be awarded and the duration of funding support. Address any conditions or milestones that may affect funding levels.
- **Reporting and accountability:** Define the reporting requirements for transfer funding recipients. Explain how recipients will be held accountable for the spending of transferred funds. Outline the responsibilities of the municipality and the transfer funding recipients in ensuring compliance with the funding terms and conditions. Describe the monitoring processes to ensure funds are used appropriately.
- **Payment and disbursement:** Detail the method of disbursement. Specify how funds can be used. This may include budget categories, allowable expenses, and limitations on administrative costs.
- **Amendment and termination:** Address the circumstances under which a transfer agreement may be amended or terminated and the procedures for doing so.
- **Appeals and grievance procedures:** Establish a process for addressing disputes or grievances related to funding decisions or implementation, which should also include reference to a public process as part of the annual budget approval process.
- **Transparency and public information:** Discuss the level of transparency the municipality will maintain regarding funding decisions, recipients, and outcomes. Clarify how information about the transfer program will be communicated to potential applicants, stakeholders, and the public.
- **Legal and regulatory compliance:** Ensure that the policy aligns with all relevant laws, regulations, and guidelines governing grant-making activities.
- **Evaluation and review:** Specify how the section 67 policy will be periodically reviewed and updated to reflect changing needs, priorities, and best practices.
- **Conflict of interest:** Address conflict of interest guidelines for both the municipality's staff and transfer review committee members.

The municipality's section 67 transfer policy should align with its integrated development plan and legal requirements and be regularly reviewed and updated to meet evolving needs.

4. Meaning of "otherwise, than in Compliance with a Commercial or Other Business Transaction"

Section 67 of the MFMA makes reference to "otherwise than in compliance with a commercial or other business transaction". These terms have not been defined in the MFMA and should, therefore, be interpreted based on the ordinary meanings of the words within the context of the scope and purpose of section 67 of the MFMA, as well as the overarching principles in the MFMA. The word "commerce" in general, is defined as the exchange of goods and services between two or more persons and "commercial" generally means one is engaged in commerce. The general meaning of "business transaction" is the process of executing a transaction where goods and services are exchanged between two or more parties. Therefore, this section was never meant to be applied to procuring goods and services for the municipality's own benefit or even in the case where it is not for the municipality's own benefit.

In *Agribee Beef Fund (Pty) Ltd and Another v Eastern Cape Development Agency and Another* [2023] ZACC 6, the Court confirmed that section 217(1) of the Constitution applies to all public procurement, even if the organ of state is not the direct beneficiary of the goods or services. In line with the principle that section 217(1) is "not confined to instances of procurement of goods and services by an organ of state for its own benefit or use," any arrangement in which an organ of state procures goods and services, must be done in terms of section 217(1) of the Constitution.

5. Irregular Expenditure due to Incorrect Application of Section 67 of the MFMA

Chapter 11 of the MFMA, read together with Municipal Supply Chain Management Regulations apply to the procurement of goods and services. In the context of section 67 of the MFMA, where a municipality receives or is due to receive goods or services from an NGO, the payment for those goods or services cannot be made in terms of section 67 of the MFMA. For a transfer to be in line with section 67 of the MFMA, it must be truly unrequited for the municipality in form and in substance - i.e. the municipality should not receive or have not received any goods and services in exchange for the transfer to the NGO.

Therefore, municipalities must not circumvent the procurement processes by procuring goods and services from NGOs under the guise that section 67 of the MFMA is applicable. Where the municipality procures goods and services in terms of section 67 of the MFMA, instead of the applicable procurement processes, the expenditure incurred will be classified as irregular as defined in the MFMA. If a municipality pays an NGO without following procurement processes, this irregular expenditure must be referred to the Municipal Public Accounts Committee (MPAC) for investigation in terms of section 32(2)(b) of the MFMA. MPAC's recommendations must then be tabled at the next available council meeting. Municipalities must, therefore, identify and address transactions where section 67 was incorrectly applied, as required in section 32 of the MFMA.

6. Financial Misconduct, Financial Offence and Other Offences

The irregular expenditure incurred must also be referred to the municipality's disciplinary board for a financial misconduct investigation in line with section 171 of the MFMA, read together with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014. If there is suspected fraud or the conduct of the officials also amounts to a financial offence in terms of section 173 of the MFMA, then the matter must also be reported to the South African Police Service for investigation. Municipalities must also take cognisance of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004, where there is suspicion of corruption involving an amount of more than R100,000.

7. The Requirement to Provide Audited Financial Statements

Section 67(1)(a)(iv) of the MFMA requires an NGO that will be receiving a transfer in terms of section 67 to submit its audited financial statements to the municipality. Given the various legal forms an NGO can take, not all NGOs are compelled to have audited financial statements. If the organisation is a nonprofit organisation, then the municipality may, subject to compliance with section 67(4) of the MFMA, enter into an agreement with the relevant organisation requiring that organisation to submit financial statements that comply with the requirements of the Nonprofit Organisations Act 71 of 1997 (NPO Act) instead of submitting audited financial statements as required by section 67(1)(a)(iv) of the MFMA. Note that the possible exemption from submitting audited financial statements is limited to NGOs serving the poor, as contemplated in and subject to section 67(4) of the MFMA.

8. General Budgeting Requirements of Section 67 Transfers

Section 67 of the MFMA read with section 17(3)(j)(iv) of the MFMA, requiring that an annual budget tabled under section 16(2) of the MFMA includes details of proposed allocations to NGOs. Consequently, the municipal council approves NGO transfers as part of the budget, contingent on affordability. The accounting officer, empowered by section 67 of the MFMA, implements these transfers according to the approved budget. Municipalities must ensure that the proposed NGO transfers are clearly indicated in the budget submission to the council, including names of NGOs intended to receive funds.

Municipalities should start the section 67 process by July of the preceding financial year, ensuring provisional NGO allocations are disclosed during consultations on the draft budget. The section 67 policy must state that NGO allocations are provisional and subject to public participation. If objections arise, NGOs must be given a chance to respond to objections, but if the municipality deems their response inadequate, no transfer should be made to an NGO.

9. NGOs Serving the Poor/ Indigent

NGOs serving the poor/ indigent are exempted from compliance with section 67(1)(a) of the MFMA as stated in section 67(4) of the MFMA, subject to the following:

- If the transfer does not exceed a prescribed limit;
- If the accounting officer takes all reasonable steps to ensure that the targeted beneficiaries receive the benefit of the transferred funds; and
- If the accounting officer certifies to the Auditor-General that compliance by that NGO with subsection (1)(a) is uneconomical or unreasonable.

Although section 67(4) of the MFMA might appear to fully exempt municipalities from section 67(1)(a), this exemption is limited and applies only to specific NGO agreement requirements. A funding agreement with the NGO remains necessary, and if compliance is relaxed, the accounting officer must certify in writing to the Auditor-General of South Africa (AGSA) why such compliance would be uneconomical or unreasonable. The certification contemplated in section 67(4) refers to at least a letter to the AGSA.

The minimum considerations that must be included in the AGSA certification are the following:

- The relevant factors behind the accounting officer's conclusion;
- Why compliance with section 67(1)(a) of the MFMA is deemed uneconomical or unreasonable; and
- The compensatory compliance measures the municipality will require from the NGO.

The accounting officer's conclusion must be justifiable, reasonable and fact-specific.

While section 67(4) does not prescribe a limit on the total transfer amount per year, municipalities must consider their budget constraints. Despite relaxed compliance requirements under section 67(1)(a), the accounting officer must ensure internal controls confirm that funds reach intended beneficiaries.

10. Section 67 Application Process Timeline

Transfers in terms of section 67 of the MFMA should be effected in terms of a budget-related policy, and should, therefore, follow a municipality's typical budget process. The following minimum steps are relevant to consider as part of a full-cycle section 67 transfer process.

Figure 1: Steps in a typical section 67 transfer full-cycle process:

Step 1:
- July: Assessment of prior financial year section 67 transfer payment performance of NGOs that received transfers.

Step 2:
- August: Based on the section 67 transfer performance assessment of the prior financial year, determine if any changes to a section 67 policy for the new upcoming financial year will be required, specifically focusing on if changes need to be made to the sub-allocation of section 67 budgeted funds as it relates to the different social programs of the municipality as indicated by the municipality's IDP.

Step 3:
- September: Compile call for proposals for section 67 transfers to NGOs, including dates for workshops to be held as part of the section 67 transfer application process based on the municipality's IDP objectives.

Step 4:
- September: Advertise call for section 67 transfer proposals for the new upcoming financial year following the normal advertisement protocols, including advertising the date(s) of any section 67 workshop that will be held with NGOs considering applying for section 67 transfers.

Step 5:
- October: Conduct a workshop with NGOs concerning the request for section 67 proposals related to the requirements of section 67 of the MFMA.

Step 6:
- October: Review the section 67 transfer proposals received to determine the NGOs that may qualify for section 67 transfers, who will be subjected to the public participation process.

Step 7:
- October: Review section 67 transfer policy and make proposals for any amendment to the policy, if so required.

Step 8:
- November: Based on the section 67 transfer proposals received and the proposed revised section 67 transfer policy, proposed the budgeted amounts for the next three financial years.

Step 9:
- March: Based on the draft of the new financial year budgeted figures, determine the provisional section 67 transfer amounts that will be paid to the identified NGOs, which will still be subjected to a public participation process.

Step 10:
- April: Advertise the list of preferred NGOs that are contemplated to receive section 67 transfers in the new financial year, with the draft budget documents that are advertised for public comments.

Step 11:
- April-May: As part of the draft budget public consultation, section 67 transfers to NGOs for the new financial year should be covered in the public budget consultation sessions.

Step 12:
- May: Review public comments received on the proposed section 67 transfers and provide an opportunity for NGOs that have received unfavourable comments to respond to the comments.

Step 13:
- June: Determine the final list of NGOs that will receive section 67 transfers based on the amounts of the new financial year's approved budget, including finalisation of the section 67 NGO agreements, after which the payments to the NGOs can commence from July.

11. Conclusion

The municipality's accounting officer must ensure that this Circular, including the Annexure to this Circular, are tabled in the next available Municipal Council meeting by submitting the Circular to the municipality's Speaker as an Annexure to a Council item. The contemplated Council item should explain the Circular and the impact of the Circular on the municipality's operations and policies. The Circular must also be brought to the attention of officials within the municipality, including the municipality's disciplinary board and the audit committee.

All clarification requests concerning this Circular should be emailed to mfma@treasury.gov.za.

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Annexure: Examples of NGO payments that do not qualify as section 67 transfers

Annexure: Examples of NGO payments that do not qualify as section 67 transfers

The National Treasury has observed certain payments made to NGOs in terms of section 67 of the MFMA for goods and services provided to municipalities by the NGO. Below are examples of section 67 payments that should have been subjected to a proper supply chain management process.

The following examples are covered in this Annexure:

- Payments to NGOs providing local tourism promotion/ facilities for the accommodation, care and burial of animal services for which municipalities are responsible;
- Payments to NGOs in the furtherance of crime prevention, including initiatives to support the South African Police Service;
- Sponsorships to sports teams;
- Payments to NGOs/ NPOs operating special rating areas/ City Improvement Districts (CIDs);
- Ward projects; and
- Festivals/ events.

Payments to NGOs providing local tourism promotion/ facilities for the accommodation, care and burial of animal services for which municipalities are responsible

Municipalities have a constitutional mandate to promote local tourism (Schedule 4B) and to provide facilities for the accommodation, care, and burial of animals (Schedule 5B). The National Treasury has noted that some municipalities outsource these services to NGOs in terms of section 67 of the MFMA instead of following a procurement process as required by section 217 of the Constitution. Where tourism promotion and animal care functions are outsourced in this manner, any expenditure incurred should be disclosed as irregular expenditure if not procured through the prescribed supply chain management processes.

Payments to NGOs in the furtherance of crime prevention, including initiatives to support the South African Police Service

Where provincial and national functions have not been assigned to municipalities, such as crime prevention services, and a municipality partners with security firms to procure, maintain, and operate cameras under crime prevention objectives (mandated to the South African Police Services), these services must be procured through a procurement process. Paying any service provider in terms of section 67 of the MFMA without following the legally required procurement process—constitutes non-compliance and must be disclosed as irregular expenditure.

Sponsorships to sports teams or sports organisers

National Treasury has observed that municipalities sponsor sports teams in terms of section 67 of the MFMA for various reasons, including promoting local economic development and tourism. In some instances, irrespective of whether the sports team uses municipal facilities or its own, in order to receive a sponsorship, there will be an obligation to advertise and market the municipality. This is the procurement of a service, and it must follow the necessary procurement process.

When a municipality sponsors a sports team, the sports team or sports organiser's may provide complimentary tickets (including food and beverages) to councillors and officials, which constitutes fringe benefits not covered by the upper limits of councillor remuneration or salary agreements. This non-compliance triggers irregular expenditure and contravenes Regulation 10 of the Municipal Cost Containment Regulations, 2019.

Payments to NGOs/ NPOs operating special rating areas/ City Improvement Districts (CIDs)

Section 22 of the Municipal Property Rates Act 6 of 2004 allows municipalities to designate special rating areas and levy additional rates to fund extra services exceeding the standard level of service in a specific municipal area. Once a special rating area is established, the municipality collects additional rates from property owners in that area. It then pays the collected additional rate over to a nonprofit company (NPC) managing the area.

Payments to the NPC are not section 67 transfers as such payments are made in the normal course of business, e.g. paying a service provider for municipal waste collection or paying a security firm to provide security services for residents/organisations in the special rating area from the additional rates charged. As a result, the payment to the NPC is part of a standard business transaction, much like any other municipal service arrangement.

Ward projects

The basis of budgeting for ward projects lies in the municipality's Integrated Development Plan (IDP), with each ward identifying and prioritising local needs through its ward committee and councillor. These needs, such as youth camps, outreach programmes, and events for the elderly, are communicated to the municipal council as part of the budgeting process. Once the budget is approved, resources are allocated based on overall budgetary constraints, project priorities, and equitable distribution across the municipality.

Where the municipality appoints an NGO to implement ward projects, the required procurement processes must be followed to appoint the NGO. However, if the municipality donates funds to an organisation whose primary objective is to pursue social purposes, compliance with section 67 of the MFMA is required.

Festivals/ events

It has been observed that municipalities host annual events, such as festivals of lights and other cultural and heritage celebrations. Where a municipality appoints an NGO to execute the event, the NGO must be appointed via a procurement process before any payment is made to the NGO for the event services rendered. The municipality cannot simply pay the NGO via section 67 of the MFMA.

Where a municipality procures artists' or bands' services to perform at the festival or event, the artists or bands must be procured following a procurement process before any payment is made to the artist or band for the event services rendered. The municipality cannot simply pay the artist or band via section 67 of the MFMA.