

SWARTLAND MUNICIPALITY

DEBT AND BORROWING POLICY



REVIEWED AND AMENDED

MAY 2024

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1. INTRODUCTION

Chapter 6 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), states that the municipality may incur long- and short-term debt, subject to certain conditions. The municipality sometimes needs additional bridging funding for over short-term periods and to finance long-term projects (capital projects). This Debt Policy provides for the municipality to obtain short- and long-term debt and set out all conditions under which the municipality will be entitled to obtain such debt. All employees of the municipality should adhere to this policy.

2. POLICY FRAMEWORK

This policy addresses all relevant principles and processes to be followed when obtaining short- and long-term debt, to ensure sufficient management of debt. The policy includes the following:

- Objectives of the policy
- Due diligence
- Delegations
- Management and internal control procedures
- Debt Management
- Types of Debt
- Securities for Debt
- Approval procedures
- Cost of Debt
- Competitive selection of bids
- Types of Debt and financing sources
- Commission and discounts
- Forbidden activities
- Reporting and monitoring of requirements
- Review of the policy

3. OBJECTIVES

The objectives of this policy are to ensure optimal performance with the lowest possible risk, through managing the debt, and to ensure accountability, responsibility and transparency throughout the process.

4. DUE DELIGENCE

Each official involved in the process of debt must do so with such judgments and care, under prevailing circumstances, as a person of prudence, discretion and intelligence would exercise in managing his or her own affairs and with his or her primary goal to protect the municipality's cash resources, the municipality's interests with its funders, and in general the municipality's good name.

5. DELEGATIONS

The management of all cash resources of the municipality is the responsibility of the Accounting Officer. The Accounting Officer will be responsible for:

- the proper implementation of this policy;
- developing of a relevant system for delegation which will ensure administrative as well as operational effectiveness; and
- appropriate controls on balancing of the management of cash resources.

The Chief Financial Officer, as designated in writing by the Accounting Officer, should advise the Accounting officer on the exercise of powers and duties with regard to this policy, and assist the Accounting Officer in the administration of the cash resources, bank accounts and debt account.

The Accounting Officer may not delegate any powers or duties in the administration of the municipality's cash resources to any political structure or councilor and no council member is allowed to interfere or attempt to interfere in the management of the municipality's cash resources.

Any delegation by the Accounting Officer in terms of this policy:

- Must be in writing.
- Is subject to any restrictions and conditions as the Accounting Officer shall prescribe.
- May be either to a specific individual or to the holder of a specific position in the municipality and may not be a committee of officials.
- Cannot deprive the Accounting officer of the responsibility concerning the exercise of delegated powers or the performance of the delegated duty.

The Accounting Officer may question any decision taken as a result of a delegation or sub-delegation in terms of this policy to confirm, amend or repeal, but no such amendment or repeal of an act may be done to break down any rights that would arise as a result of the decision.

For the implementation of this policy, any reference to "Accounting Officer" also means "any other person acting under a delegated power or function as exercising delegated by the Accounting Officer in terms of paragraph 5.

6. MANAGEMENT AND INTERNAL CONTROL PROCEDURES

The Accounting Officer, assisted by the Chief Financial Officer must take all reasonable steps to ensure:

- That the municipality has a managerial-, accounting- and information system to maintain all debt-, accounts-, receipting-, withdrawals- and debt transactions.

- That, in the case of debt, amounts due been calculated on a bi-annual basis
- That the municipality have a system of internal controls over bank- and debt accounts, receipting-, withdrawal- and debt transactions.

7. DEBT

7.1. Debt Management

The Accounting Officer is responsible for the administration of all debt procedures and must take all reasonable steps to ensure that debts are managed in compliance with all audit requirements and any legal requirements included as prescribed in the Law on Local Government: Municipal Finance Management Act, 2003 and in particular Chapter 6 of the Act.

The Accounting Officer may delegate the duties, linked to investments.

7.2. Debt Ethics

All officials involved in the debt management process must act with fidelity, honesty, integrity and in the best interest of the municipality and must strive, within the sphere of influence of the officials, to prevent any impairment of the debt of the municipality and creating solvency problems.

No officials involved in the debt management process should use his or her position or privileges as, or confidential information obtained in the process for personal gain or unfair advantage to another person.

The Accounting Officer must report as soon as practicable to the Mayor as well as the National Treasury any alleged violation of the above and may also make recommendations whether the alleged offending party must be listed on the National Treasury's database of persons prohibited from doing any business with the public sector. Any such report by the Accounting Officer must complete details of the alleged violation and a written response from the alleged offending party, as proof that the alleged offending party did receive the allegations in writing and had at least 7 (seven) working days to respond to the allegations. Any sponsor, offered or granted to the municipality must be immediately reported to the National Treasury.

7.3. Types of Debt

7.3.1. Short-term Debt

To ensure that the municipality has sufficient cash to meet the objectives of local government, as contained in Article 152 of the Constitution of the Republic of South Africa (Act 108 of 1996), it is sometimes necessary to obtain short-term financing in order to finance cash shortages in a financial year to cover the bridging operation and / or temporary capital financing. Short-term debts may only be incurred if the Council

is convinced that it will be refunded during the financial year and a report to the Council should indicate how and when it will be repaid, with specific reference to the conditions set in Article 45 of the Act on Local Government: Municipal Finance Management Act (Act No. 56 of 2003).

No debt agreement for short-term debts may be incurred for a period that expires after the end of the financial year in which they are incurred. The Accounting Officer must, as part of the budgeting, determine in time whether the Council will need short term debt for the new financial year ahead and take such steps to ensure that the Council could consider a debt agreement before the date on which the Council will require such financing.

By considering the cash flow of the municipality it must be provide for emergency situations that additional cash may be needed and should be kept in mind to determine whether the Council should enter into short-term debts.

Nothing prevents the Accounting Officer, if it appears that during the financial year a cash shortage arises, to obtain approval from the Council for the introduction of short-term debts. However if it will not be repaid in the same financial year as a result of underperformance in terms of credit or over expenditure, the Council is not allowed to approve such agreement.

The conditions set out in Chapter 6 of the Act on Local Government: Municipal Finance Management, 2003 (Act No. 56 of 2003) must at all times be complied with by the Accounting Officer.

7.3.2. Long-term Debt - Capital Asset

The Council has an obligation to acquire assets in order to ensure service delivery, however it is not always possible for the Council to finance these assets from its own cash reserves. It is for this purpose that the Council may incur long-term debt. No capital projects may be entered into before the financing sources have been considered, approved and are available. For the purposes of this, “available” means a legally enforceable document in the municipality’s possession that guarantees the funding. Short-term bridging finance for capital expenditure may be incurred in anticipation of the disbursement of the long-term debt, provided that the long-term financing is “available” and the conditions for engaging in short-term debts, as per par.7.3.1 above, are met.

The municipality will only consider borrowings once the municipality has exhausted its responsibility to seek funding from third parties by means of grants, donations or development charges for partial or full funding of the capital expenditure requirements.

The cost of long-term assets which may be incurred include interest for a reasonable time, the cost of securities, finance costs, advertising, legal, advisory, trustee, credit

ratings and other costs of finance, professional services, where it directly applicable to the project and other amounts that the Minister of Finance may approve.

The terms of repayment of any debt must be calculated according to the expected useful life of the assets financed with the debt. No long-term debt may be incurred if it is not compatible with the Municipality's capital budget, excluded for refinancing.

7.3.3. Long-term Debt - Refinancing

The Municipality is, in terms of Section 46 (5) of the Act on Local Government: Municipal Finance Management Act, 2003, allowed refinancing of long-term debt with the aim to save on the cost of debt. The Accounting Officer must, for this purpose, at least annually and as part of the budget process evaluate and report to the Council about the cost of existing debt, or if the refinancing is a benefit to the Municipality. As part of the evaluation, the Accounting Officer should consider if a once-off payment at the end of the loan period would not be more favorable to the Municipality if the repayments are invested in an investment fund with reasonable projected return on such investment.

Refinancing may only be for long-term debt

- a) which has been incurred lawfully in the past;
- b) with the further condition that the loan period does not exceed the expected lifespan of the assets financed thereby.
- c) The net present value of projected future payments (including principal and interest payments) after refinancing is less than the net present value of projected future payments before re-financing; and
- d) the discount rate used in projecting net present value referred to in paragraph (c), and any assumptions in connection with the calculations must be reasonable and in accordance with criteria set out in a framework that may be prescribed.

7.4. Security for Debt

It is common practice that investors or financiers required security for granting loans. The municipality will provide security for the inclusion of debt, as set out in section 48 of the Act on Local Government: Municipal Finance Management Act, 2003, but the Council will consider each form of security, together with the debt agreement.

7.5. Procedures for debt approval and securities

The procedures for approval of debt and debt security are defined in Chapter 6 of the Act on Local Government: Municipal Finance Management Act, 2003.

Swartland Municipality will only consider borrowing as a source of funding once evidence has been provided that all other sources of funding (such as grants and private funding) was sought and that such attempts to fund the capital acquisition were unsuccessful.

For completeness of this policy is extracts of the legislation shown below:

7.5.1. Short-term Debt

“MFMA Sec45 (2) A municipality may incur short-term debt only if -

- (a) A resolution of the municipal council, signed by the mayor, has approved the debt agreement; and
- (b) The accounting officer has signed the agreement or other document which creates or acknowledges the debt.”

7.5.2. Long-term Debt

46(2) A municipality may incur long-term debt only if -

- (a-b) A resolution of the municipal council, signed by the mayor, has approved the debt agreement; and the accounting officer has signed the agreement or other document which creates or acknowledges the debt.

46(3) A municipality may incur long-term debt only if the accounting officer of the municipality -

- (a) Has, in accordance with section 21A of the Municipal System Act-
 - (i) at least 21 days prior to the meeting of the council at which approval for the debt is to be considered, made public in an information statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided; and
 - (ii) Invited the public, the National Treasury and the relevant provincial treasury to submit written comments or representations to the council in respect of the proposed debt; and
- (b) Has submitted a copy of the information statement to the municipal council at least 21 days prior to the meeting of the council, together with particulars of-
 - (i) The essential repayment terms, including the anticipated debt repayment schedule; and
 - (ii) The anticipated total cost in connection with such debt over the repayment period.”

7.5.3. Security

“MFMA Sec48 (3) A council resolution authorizing the provision of security in terms of subsection (2) (a) -

- (a) Must determine whether the asset or right with respect to which the security is provided, is necessary for providing the minimum level of basic municipal services; and

(b) If so, must indicate the manner in which the availability of the asset or right for the provision of that minimum level of basic municipal services will be protected.

(4) If the resolution has determined that the asset or right is necessary for providing the minimum level of basic municipal services, neither the party to whom the municipal security is provided, nor any successor or assignee of such party, may, in the event of a default by the municipality, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic municipal services.

(5) A determination in terms of subsection (3) that an asset or right is not necessary for providing the minimum level of basic municipal services is binding on the municipality until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.”

7.5.4. Guarantees

(50) A municipality may not issue any guarantee for any commitment or debt of any or of state or person, except on the following conditions:

- (a) The guarantee must be within limits specified in the Municipality's approved budget.
- (b) A municipality may guarantee the debt of a municipal entity under its sole control only if the guarantee is authorised by the council in the same manner and subject to the same conditions applicable to a municipality in terms of this Chapter if it incurs debt;
- (c) A municipality may guarantee the debt of a municipal entity under its shared control or of any other person, but only with the approval of the National Treasury, and then only if:
 - (i) the Municipality creates, and maintains for the duration of the guarantee a cash-backed reserve equal to its total potential financial exposure as a result of such guarantee; or
 - (ii) the municipality purchases and maintains, in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer which covers the full amount of the Municipality's potential financial exposure as a result of such guarantee.

Deposits for rental contracts and bank guarantees for creditors such as the South African Post Office or Eskom is not subject to the above.

7.6. Cost of Debt

The municipality must guard that the cost of long-term debt do not rise to such a level that it has a remarkable negative effect on taxes or other municipal charges such as maintenance. The maximum percentage of the operating budget for the repayment of debt must be calculated in the municipality's long-term budget with

thorough consideration of the needs identified in the Integrated Development Plan, the cost of new or replacement of existing infrastructure and equipment and other administrative needs.

7.7. Competitive Bidding

The Accounting Officer should adhere to the process as per Supply Chain policy when considering the bids received. For purposes of evaluating tenders in terms of costs, the expected interest debt over the full term of the proposed debt agreement calculated and used as the basis for the 80/20 and 90/10 allocations.

7.8. Types of Debt and Financing sources

The types of debt that may be incurred and the debt financing which may be incurred are as follows:

7.8.1. Types of Short-term Debt

- Bank overdraft
- Short Term Loans
- Marketable Bonds
- Non-Marketable Bonds
- Other Securities

7.8.2. Types of Long-term Debt

- Long-Term Loans
- Installment Credits
- Finance Leasing
- Marketable Bonds
- Non-Marketable Bonds
- Other Securities

7.8.3. Financing Sources

- Public
- Banks
- Development Bank of South Africa
- Infrastructure Finance Corporation
- Public Investment Commissioners
- Insurance Companies
- Municipal Pension Funds
- Other Public Pension Funds
- Bond Trusts
- Internal Funds
- Other Sources

7.9. Commission or Cost

No Commission is payable to an officer or board member, or spouse to, business partner or immediate relative of an officer or board member by an institution, investors or financiers, for any reference made by them.

Any commission, fee or other compensation paid to any person by an institution must certify to the municipality by the institution through a certificate.

Any quotation / tender to the municipality given by an institution must be net of fees, commissions or rewards, but also need to include commission, rewards or costs, that will be paid in respect of the debt.

7.10. Performance

The Accounting Officer must annually measure and report to the Council on the performance of its debt in terms of the stipulated objectives of this policy.

7.11. Forbidden activities

- No debt may be made otherwise than in the name of the municipality.
- Money cannot be borrowed for the purpose of investments.
- No person, including officers and council members, may interfere or attempt to interfere in the management of debt attributed to the Accounting Officer or persons delegated by the Accounting Officer.
- No debt may be made in any other currency than the Rand, and that is not linked, or is affected by any change in the value of the Rand against any foreign currency.
- No debt shall be made for expenses not related to the functions and powers of the municipality.

7.12. Reporting

The Accounting Officer must within 10 working days after the end of each quarter furnish the Mayor with a report setting out the detail of each debt portfolio. The above report must be in the format provided by National Treasury for reporting and monitoring of debt...

8. Review of the Policy

This Debt Policy is the only policy of the municipality and replaces any past policies in this regard. Any revision of the policy must be approved by the Municipal Council. All proposed changes to this policy should be tabled by the Mayor as part of the annual review of policies and budget documentation. Whenever the Minister of Finance or the National Treasury or the Auditor - General requests changes to the policy by way of legislation, changes to GRAP or otherwise, it must be reviewed and submitted for consideration by the Council. Such submission must be accompanied with a full description of the reasons for the change to the policy.

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