

(10 September 2021 – to date)

PUBLIC SERVICE ACT (PROCLAMATION 103 OF 1994)

Proclamation 103 in Government Gazette 15791 dated 3 June 1994. Commencement date: 3 June 1994

ADMINISTRATION AND OPERATIONS: MUNICIPAL INFRASTRUCTURE SUPPORT AGENT

*Government Notice R469 in Government Gazette 36634 dated 5 July 2013. Commencement date:
5 July 2013*

as amended by:

*Government Notice 832 in Government Gazette 45125 dated 10 September 2021. Commencement date:
10 September 2021.*

I, Masenyani Richard Baloyi, Minister for Cooperative Governance and Traditional Affairs, acting in terms of section 7A(4) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), read with Proclamation No. R. 29 of 11 May 2012 promulgated by the President of the Republic of South Africa, which established the Municipal Infrastructure Support Agent ("MISA") as a government component, hereby determine in the attached Schedule the object, duties and functions of MISA, the powers and duties of the head of MISA, as well as the reporting, administrative, organisational, oversight and other management objects, processes and procedures of MISA.

As provided for in Proclamation No. R. 29 of 11 May 2012 promulgated by the President of the Republic of South Africa, the Municipal Infrastructure Support Agent is established as a government component with effect from 11 May 2012.

Signed at Pretoria on this 03 day of June 2013.

(Signed)

MINISTER M.R. BALOYI

MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

Date: 2013/06/03

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GOVERNMENT NOTICE: MUNICIPAL INFRASTRUCTURE SUPPORT AGENT

SCHEDULE

PART ONE

1. Definitions

In this Schedule, unless the context indicates otherwise—

“Advisory Board” means a board that may be established for MISA by the executive authority in accordance with section 7A(4) of the Public Service Act, 1994 (Proclamation 103 of 1994[sic];

“capacity building and support initiatives” means initiatives to support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions necessary for the development, maintenance and operation of municipal infrastructure;

“Department” means the department in the national sphere of government responsible for local government affairs;

“Director-General” means the Director-General of the department;

“District Development Model” means an integrated, district based approach to addressing service delivery challenges and localised procurement and job creation that promotes and supports local

businesses and communities, with joint and collaborative planning at local, district and metropolitan level by all spheres of governance resulting into a single, strategically focused One Plan;

“government component” means a government component as defined in section 1 of the Public Service Act, 1994 (Proclamation 103 of 1994);

“Head of MISA” means a person formally appointed as the accounting officer for MISA and whose duties and functions are defined in terms of 7A(2) of the Public Service Act, 1994 (Proclamation 103 of 1994);

“Minister” means the member of Cabinet responsible for local government affairs;

“MISA” means the Municipal Infrastructure Support Agent;

“municipal infrastructure” means infrastructure necessary to enable a municipality to provide basic municipal services;

“municipality” means a municipality contemplated in section 155 of the Constitution;

“province” means a province contemplated in section 103 of the Constitution;

“PSA” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“spatial planning” means spatial planning as defined in the national spatial development framework; and

“spatial transformation” means spatial transformation as defined in the national spatial development framework.

(Part One substituted by section 1 of GN 832 dated 10 September 2021)

PART TWO

2. Object, powers and functions of MISA

2.1 The objective of MISA is to render technical advice and support to municipalities so that they optimise municipal infrastructure provisioning.

2.2 MISA must perform the functions listed below to support and strengthen the capacity of municipalities to provide access to basic service, exercise their powers and perform the functions required to develop, maintain and operate municipal infrastructure. The functions of MISA are, subject to paragraph 3 –

2.2.1 to support municipalities to conduct effective infrastructure planning to achieve sustainable service delivery;

2.2.2 to support and assist municipalities with the implementation of infrastructure projects as determined by the municipal Integrated Development Plans (IDPs);

2.2.3 to support and assist municipalities with the operation and maintenance of municipal infrastructure;

2.2.4 to build the capacity of municipalities to undertake effective planning, delivery, operations and management of municipal infrastructure; and

2.2.5 any function that may be deemed ancillary to that listed in this subparagraph.

3. In rendering services and performing its functions, the following protocols should be observed:

3.1 MISA may only do what it is authorised to do by law, including agreements that it enters into with the department and relevant stakeholders; and

3.2 MISA is subject to all applicable legislative and other legal requirements, as well as the terms of the agreements that it enters into with the department, relevant stakeholders and municipalities.

4. MISA shall perform its functions subject to general guidance provided by the Minister and the Advisory Board should such be appointed.

5. The Minister, provided that it is permitted in terms of applicable legislation, may at any time, after consultation with the Director-General, in writing notify the Head: MISA that MISA is instructed to perform other functions previously performed by the department and which are complementary or additional to the functions listed in subparagraph 2.2 or items (a), (b), (c), (d) or (e) above. The Head: MISA and the Director-General should then enter into an agreement for the orderly and efficient transfer of that function and concomitant funding to MISA, in terms of the written instruction from the Minister.

6. The Head: MISA is responsible and accountable for any function transferred to MISA in terms of subparagraph 5 as from the date of transfer recorded in the agreement contemplated in subparagraph 5.

7. Any instruction issued by the Minister in terms of subparagraph 5 must be recorded in MISA's annual report.

8. The Head of MISA shall be appointed in accordance with the Public Service Act and shall have such powers and duties as conferred, assigned, delegated and/or allocated by the Minister in terms of section 7A of the Public Service Act, 1994 (Proclamation 103 of 1994 [sic], as amended).

PART THREE

Prepared by:

9. Administrative and operational matters

- 9.1 MISA is a government component for purposes of the Public Service Act (Proclamation No. 103 of 1994) and is subject to the provisions of that Act and the Public Finance Management Act, 1999 (Act 1 of 1999).
- 9.2 The Minister is the Executive Authority of MISA for purposes of the Public Finance Management Act, 1999 (Act 1 of 1999).
- 9.3 MISA must submit to the Minister for approval its strategic plan setting out its policy priorities, programmes *[sic]* and project plans for a three-year period.
- 9.4 MISA must, at least three months before the end of each financial year or at a later date determined by the Minister, submit to the Minister for approval a business and financial plan –
 - 9.4.1 containing a projection of the revenue and expenditure of MISA in respect of the ensuing financial year;
 - 9.4.2 detailing the national municipal infrastructure support plan for the ensuing financial year; and
 - 9.4.3 detailing the sector capacity development plan for the ensuing financial year.
- 9.5 MISA must –
 - 9.5.1 keep full and proper records of its financial year;
 - 9.5.2 prepare an annual report and financial statements for each financial year in accordance with generally accepted accounting practice;
 - 9.5.3 submit those financial statements within three months after the end of the financial year to the Auditor-General for auditing.
- 9.6 The annual report and financial statements referred to in subsection 9.5.1 must –
 - 9.6.1 fairly present the state of affairs of MISA and its performance against predetermined objectives for the financial year concerned;
 - 9.6.2 include particulars of –
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;

- (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
- (iii) any losses recovered or written off;
- (iv) any other matter that may be prescribed.

10. Shared services

- 10.1 On establishment, MISA and the department, with the guidance of the Executive Authority and in consultation with the Minister for the Public Service and Administration, will conclude a Memorandum of Understanding on Shared Services determining, *inter alia*, the nature and scope of shared services and the financial and operational obligations and arrangements of MISA and the department in this regard.
- 10.2 MISA and the department shall support and co-operate with one another in mutual trust and good faith in order to support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions necessary for the development, maintenance and operation of municipal infrastructure.
- 10.3 MISA will share the services with the Department in accordance with a memorandum of understanding entered into and by duly authorised signatories of the two parties; such services may include:
- 10.3.1 security;
 - 10.3.2 facilities management;
 - 10.3.3 human resources management systems;
 - 10.3.4 documents and record management;
 - 10.3.5 auditing and risk management; and
 - 10.3.6 legal services.

PART FOUR: REPORTING REQUIREMENTS

11. Reporting responsibilities

- 11.1 In this regard MISA must on a quarterly basis report to the Executive Authority on –

11.1.1 measures taken by MISA on the implementation of, and compliance with, the MISA Strategic Plan, which includes:

11.1.2 the national municipal infrastructure support plan;

11.1.3 the sector capacity development plan;

11.1.4 the administrative and operational performance of MISA during the preceding quarter; and

11.1.5 any other matter related to the shared services arrangement concluded between the department and MISA as contemplated in subparagraph 9 earlier in this document.

11.2 To support departmental reporting to regulatory authorities –

11.2.1 MISA must provide the Director-General with such information and documentation as may be required to enable the Director-General to report on departmental policy implementation, performance, integrated planning, budgeting and service delivery;

11.2.2 MISA must submit within five months of the end of the financial year to the Director-General –

11.2.2.1 the annual report on the activities of MISA during that financial year;

11.2.2.2 audited financial statements of MISA for that financial year; and

11.2.2.3 the report of the Auditor-General on those statements.

PART FIVE: ADVISORY BOARD OF MISA

12. Establishment and composition of Advisory Board

12.1 The Minister may, in terms of section 7A(4)(e) of the PSA, at any time appoint an Advisory Board for MISA, subject to and in accordance with the provisions of this Part, but nothing in this Schedule obligates the Minister to appoint an Advisory Board.

12.2 In the event that the Advisory Board is appointed, the Board would be required to advise the Minister and the head of MISA on matters related to:

12.2.1 measures to support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions necessary for the development, maintenance and operation of municipal infrastructure;

12.2.2 strategic support and leadership on technical matters and procurement for municipal capacity-building and support initiatives;

12.2.3 strategies and programmes of the MISA, including the implementation of the District Development Model, spatial planning and spatial transformation;

12.2.4 strategy, governance and performance of MISA and related functions; and

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12.2.4 and any other matter that the Minister may, from time to time, determine in writing.

(Section 12.2 substituted by section 2(a) of GN 832 dated 10 September 2021)

12.3 The Board is an Advisory Board and does not have any executive functions, duties or powers.

12.4 The Board—

12.4.1 must consist of—

(a) at least 10 and not more than 15 members appointed by the Minister, subject to subsections 12.4.3 and 12.8.1 and section 18; and

(b) the Head: MISA in an *ex officio* capacity;

12.4.2 may consist of certain members contemplated in subsection 12.4.1 drawn from the public sector, including—

(a) the Departments of Cooperative Governance, National Treasury and Public Service and Administration; and

(b) representative bodies for local government and institutions of traditional leadership; and

12.4.3 members must collectively have knowledge, experience and expertise relating to the functions of MISA, including in the fields of arts, culture and heritage, development economics, finance and investment, human settlement, land and agriculture, ocean economy, public administration, public infrastructure, regional development and planning infrastructure procurement, trade and investment, transport, waste management and environment, and water and sanitation.

(Section 12.4 substituted by section 2(b) of GN 832 dated 10 September 2021)

12.5 The Minister must designate a chairperson and a deputy-chairperson from the members contemplated in subsection 11.4.1.

12.6 For purposes of appointing the members of the Board, the Minister must by notice in the *Gazette* and in two newspapers published and circulating nationally, invite nominations for membership of the Board.

12.7 The notice contemplated in subsection 12.6 must specify a period of at least 30 days for nominations to be submitted to the Minister.

12.8 The Minister must –

12.8.1 appoint the members of the Board from nominations submitted in response to the notice;

12.8.2 strive to ensure that the composition of the Board is broadly representative, with due regard to race, gender and regional representation; and

12.8.3 publish the names of persons appointed as members of the Board and the dates of commencement of their terms of office in the publications contemplated in subsection 11.6.

13. Terms of office of Board members

13.1 A member of the Board –

13.1.1 holds office for a period of three years from the date of their appointment by the Minister; and

13.1.2 is eligible for reappointment on expiry of their term of office, but may not serve more than two consecutive terms of office.

13.2 Despite subsection 12.1, the Minister may, by notice in the *Gazette*, extend the period of office of all members of the Board for a maximum period of 12 months.

14. Disqualifications from membership of Board

14.1 A person may not be appointed as a member of the Board if that person –

14.1.1 is an un-rehabilitated insolvent;

14.1.2 has been declared by a court to be mentally ill;

14.1.3 is a member of Parliament, a provincial legislature or a municipal council;

14.1.4 has been convicted of an offence in the Republic or elsewhere, other than an offence committed prior to 27 April 1994 associated with a political objective, and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both;

14.1.5 has at any time been removed from an office of trust on account of breach of fiduciary duties; or

14.1.6 is otherwise disqualified in terms of the Companies Act, 1973 (Act 61 of 1973).

15. Duties of Advisory Board members

A member of the Board must –

15.1 act with fidelity, honesty, integrity and in the best interests of MISA;

15.2 comply with the code of conduct and disclosure obligations contemplated in section 16;

15.3 not act in a way that is inconsistent with the responsibilities of the Board in terms of this Act; and

15.4 not use the position or privileges of, or confidential information obtained as a member of the Board, for personal gain or to improperly benefit another person.

16. Code of good conduct and disclosure of interests

16.1 The Minister must approve a code of conduct for the members of the Board.

16.2 Members of the Board –

16.2.1 must make full disclosure to the Board of any conflict of interest including any potential conflict of interest;

16.2.2 may not vote, attend or participate in any proceedings of the Board in relation to any matter before the Board in respect of which they have a conflict or potential conflict of interest; and

16.2.3 must comply with any decision of the Board as to whether they are entitled to participate in any particular proceedings of the Board.

16.3 For the purposes of this section a member has a conflict of interest if –

16.3.1 the member, or a family member, partner or business associate of the member is applying for, or has a financial or other interest in a business that is involved with MISA; or

16.3.2 the member has any other interest that may preclude, or may reasonably be perceived as precluding the member from performing the functions of a member in a fair, unbiased and proper manner.

- 16.4 Any disclosure in terms of subsection 10.2(a) and any decision of the Board in terms of subsection 10.2 (c) must be recorded in the minutes of the Board.

17. Vacation of office and filling of vacancies

- 17.1 A member of the Board must vacate office if the member –

17.1.1 resigns in writing addressed and delivered to the Minister;

17.1.2 ceases to qualify for appointment to the Board in terms of section 14;

17.1.3 is removed from office by the Minister –

- in the public interest and for just cause;
- after consulting the Board; and
- after a fair hearing.

- 17.2 Every vacancy of the Board arising from the death of a member or from circumstances referred to in subsection 16.1 must, within three months of the vacancy occurring, be filled for the unexpired portion of that member's term of office by a suitable person appointed by the Minister in terms of section 11.4.

18. Remuneration of members of Board and committees

A member of the Board or a member of any committee of the Board, who is not in the full time employment of the State, may be paid such remuneration and allowances from the funds of MISA as determined by the Minister with the approval of the Minister of Finance.

19. Meetings of Board

- 19.1 The Board must hold at least four ordinary meetings each year at times and places determined by the chairperson of the Board.

- 19.2 The chairperson of the Board –

19.2.1 may convene special meetings of the Board; and

19.2.2 must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of Board members.

- 19.3 The request referred to in subsection 19.2.1 must clearly state the reason for the request and only those matters may be discussed at the special meeting.
- 19.4 The Minister may request a meeting of the Board at any time, should the need arise.
- 19.5 If the chairperson and deputy-chairperson are not present, the members present must appoint another member to preside at the meeting.
- 19.6 At any meeting, a majority of the members of the Board constitutes a quorum.
- 19.7 A decision of the majority (how many of the 10 members constitutes the majority?) of members present at any quorate meeting constitutes a decision of the Board and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to a deliberative vote.
- 19.8 A decision taken by a majority of members present at a quorate meeting, or an act performed in terms of such a decision, is not invalid merely by reason of –
- 19.8.1 a vacancy on the Board; or
- 19.8.2 the fact that any person not entitled to sit as a member of the Board participated at the meeting at the time the decision was taken.
- 19.9 Minutes of the proceedings of every meeting of the Board must be –
- 19.9.1 recorded and kept in a manner that cannot be altered or tampered with; and
- 19.9.2 submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson.
- 19.10 The Board may –
- 19.10.1 permit members to participate in a particular meeting by telephone or via audio-visual technology and any member who participates in this manner is regarded as being present at the meeting; and
- 19.10.2 invite any person to attend a meeting for the purpose of advising or informing the Board on any matter.
- 19.11 The Board may by resolution make rules to further regulate its proceedings.

20. Resolution of Board without meeting

20.1 The Board may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in a manner and in accordance with a procedure determined by the Board.

20.2 A resolution in terms of subsection 19.1 –

20.2.1 has the same status as if it was adopted at a meeting; and

20.2.2 must be regarded as having been adopted on a day determined in accordance with the procedure contemplated in subsection 19.1.

21. Committees of Board

21.1 The Board may establish any committees to assist the Board in the performance of its functions and duties and may determine their composition, terms of reference, procedures and duration.

21.2 The Board may appoint any suitably qualified person to serve on a committee, including any person in the full-time employment of the State.

21.3 A committee must be chaired by a member of the Board.