

121113 pccoop



cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA



SALGA
South African Local Government Association

DRAFT

**LOCAL GOVERNMENT CREDIT CONTROL AND DEBT COLLECTION
POLICY GUIDELINES**



Federal Republic of Germany
The Federal Government

giz

Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

LOCAL GOVERNMENT CREDIT CONTROL AND DEBT COLLECTION POLICY GUIDELINES

1. INTRODUCTION

SALGA has produced these CREDIT CONTROL AND DEBT COLLECTION POLICY GUIDELINES as a resource to assist municipalities to strengthen their revenue administration and credit control as well as debt collection activities.

A well-functioning revenue administration is essential to the financial health of any municipality, and credit control is a critical component of revenue administration. It is, however, well known that municipalities are owed many billions of rand by residents, businesses, other institutions, and even government departments. Against this background, many municipalities are seeking ways of strengthening their revenue administration activities, in particular their credit control policies and procedures. These GUIDELINES are intended as a tool to assist municipalities in the effective (re)development and implementation of such policies and procedures.

SALGA is of the view that political and managerial leadership as well as credit control practitioners in many municipalities would benefit from having such a resource available.

These guidelines contain and discuss:

- An outline of the legal framework for municipal credit control (brief accounts of 9 legal instruments)
- Strategic considerations regarding municipal credit control
- Matters to include in a municipal credit control policy
- Sample credit control and debt collection policy
- Sample credit control and debt collection work flow processes
- Sample credit control and debt collection forms
- Brief accounts of 14 important court decisions regarding credit control and debt collection

The GUIDELINES are, of course, not prescriptive, nor do they assume generic application. However, municipal credit control and debt collection takes place within a national legislative and policy framework, and there is much that is common to all municipalities.

Municipalities will necessarily want to ensure that their policies and procedures are specifically suitable to their own circumstances. Municipalities will also necessarily want to obtain their own legal advice, specifically on legal risks and wording. Nothing in these GUIDELINES is intended to be used as templates or to be unthinkingly copied.

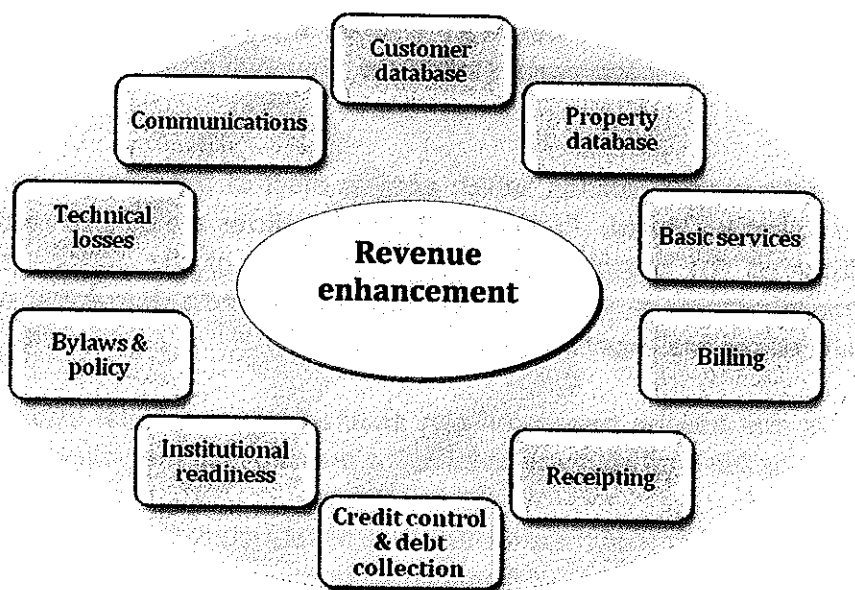
When considering their credit control policies, municipalities should furthermore consider at least the following key contextual issues:

(b) Credit control is only one part of the revenue value chain

Credit control and debt collection are of course only one aspect of municipal revenue -- in fact, they come right at the end of the revenue value chain which runs from meter reading, through billing administration and payments collection before arriving at debtor management.

It would be a serious error to rely only on credit control – in fact it is impossible to succeed with such an approach. Municipalities will necessarily have to look at the whole revenue process.

The following diagram suggests the range of issues to be considered.



(Adapted from: South African Local Government Association, 2010, Improving Revenue Management for Local Government)

The accurate and timely billing of customers for municipal services is integral to the effective implementation of this policy. It therefore stands to reason that unless the customer database can be relied upon, a municipality will be unable to regularly and correctly bill its customers for services. The impact of this could be non-payment or delayed payment for services.

(c) Credit control and debt collection policies should be consulted properly

Before adoption by Council, the policy, as with any other budget-related policy, is open for comment and input by the public.

Certain municipalities also perform compliance reviews to assess the practicality of the implementation of the current year's policy to ensure that the policy is understood and interpreted in the correct manner.

Imbizos and road shows are used as forums to engage the community on the policy and to provide updates of any amendments.

The policy is also advertised in local publications, as required by law.

2. LEGAL FRAMEWORK

The legal framework central to credit control and debt collection and the functioning of municipalities is contained in the following legislation:

2.1 Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)

The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) is the supreme law of the Republic. Any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

The right to sufficient water and appropriate assistance where one is unable to support citizens and their dependants is enshrined in the Constitution. In this instance the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.

The objectives of local government are set out in Section 152 of the Constitution and include:

- providing a democratic and accountable government for local communities;
- providing services to communities in a sustainable manner;
- promoting social and economic development;
- promoting a safe and healthy environment; and
- encouraging the involvement of communities and community organisations in the matters of local government.

Furthermore, a municipality must achieve these objectives within its financial and administrative capacity. It is therefore within the powers and functions of a municipality to impose rates on property and surcharges on fees for services provided by or on behalf of a municipality as it aims to achieve its objective of providing services to communities in a sustainable manner.

2.2 Electricity Regulation Act, 2006 (No. 4 of 2006)

The Electricity Regulation Act, 2006 (No. 4 of 2006) prohibits a municipality (licensee) from reducing or terminating the supply of electricity unless

- the customer is insolvent;
- the customer has failed to honour, or refuses to enter into an agreement for the supply of electricity; or
- the customer has contravened the payment conditions of that licensee.

To this end a municipality must ensure that it enters into service agreements with its customers for the supply of services, including electricity, and that these agreements clearly spell out the service and payment conditions which the customer will be subject to.

A credit facility is defined as an agreement where a credit provider undertakes "to supply goods and services..., as determined by the consumer from time to time...". Municipal services are by their nature continuous and will therefore be considered credit facilities unless they do not impose penalties before the lapse of 30 days after the rendering of a statement and comply with Section 4(6)(b).

Where a municipality provides credit facilities, it shall be required:

- to register as a credit provider with the National Credit Regulator (NCR), submit required documentation and pay annual fees to the regulator;
- to ensure that credit transactions are not unlawful and that they do not have clauses that are unlawful;
- to apply restrictive clauses in the contract and limitations on the cost of credit; and
- to be subject to restrictions pertaining to termination of agreements, enforcement and dispute resolutions.

Discount transactions and instalment agreements where payment is deferred and interest or any other charges are payable, shall constitute the provision of credit facilities.

The far-reaching implication of the provisions of the Act for a municipality that supplies credit facilities is that any consumer adjudged to be over-indebted may be placed under debt review by a debt counsellor or a court during this period. This means that a municipality will not be able to take any legal action against such a person for any outstanding amount. It is for this reason that municipalities should ensure that they collect as much of the money due before a service contract becomes an incidental credit agreement and beyond.

A consumer is over-indebted if, on the basis of available information at the time, he cannot or will not be able to satisfy in a timely manner his obligations in terms of all his credit agreements.

2.5 Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)

The Municipal Finance Management Act (Act 56 of 2000) places responsibility on the Municipal Manager as the accounting officer to ensure that a municipality has and implements a Credit Control and Debt Collection policy.

As an accounting officer, the Municipal Manager is also responsible for the management of the revenue of the municipality and is under obligation to take all reasonable steps to ensure that the municipality has effective revenue collection systems consistent with Section 95 of the Municipal Systems Act and the municipality's Credit Control and Debt Collection policy, and that the municipality charges interest on arrears, except where the Council has granted exemptions in accordance with its budget-related policies.

3. DEVELOPMENT OF A CREDIT CONTROL POLICY

3.1 Strategic risks to consider

Municipalities commonly face a number of risks associated with the implementation of their revenue and credit control activities, which have the potential to hinder effective implementation:

	RISK	IMPACT
1	Consumer affordability	Incomplete indigent registers Reduced municipal cash flow Reduced service delivery Increased service delivery protests Annual budgets not adjusted to take into account the reduced payment levels Expenditure has to be redirected Adverse audit opinion
2	Political interference	Inconsistent application of the policy Administration open to undue influence and pressure Non-compliance with the law
3	Skills and capacity shortage	Inability to provide the administrative support and direction required Non-compliance with the law
4	System integration	Systems which require manual intervention Increased cost to ensure integration

All of these are more important than the adequacy of the credit control and debt management policy itself.

Many municipalities will find they must spend more time on ensuring that the credit control policy is properly implemented, than in fine tuning and amending the policy.

3.2 Contents of policy

The Local Government: Municipal Systems Act (Act 32 of 2000) prescribes a list of matters which must be addressed in a municipal credit control and debt collection policy.

These are:

- (a) credit control procedures and mechanisms;
- (b) debt collection procedures and mechanisms;
- (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
- (d) realistic targets consistent with generally recognised accounting practices and collection ratios and the estimates of income set in the budget less an acceptable provision for bad debts;
- (e) interest on arrears, where appropriate;
- (f) extensions of time for payment of accounts;
- (g) termination of services or the restriction of the provision of services when payments are in arrears;
- (h) matters relating to unauthorised consumption of services, theft and damages; and
- (i) any other matters that may be prescribed by regulation.

3.5 Termination of services

Serving of a final demand notice to terminate services occurs where a consumer has failed to pay an amount owed on or before the due date, or failed to enter into a written agreement with the municipality for the payment of arrears.

Some municipalities lack the capacity to issue final demand notices and to terminate services immediately after notice of termination has been issued. In these cases their administrative capacity is inadequate compared to the vastness of the municipal area and the number of terminations to be done. This results in the escalation of existing debt.

For effective credit control and debt collection, a municipality should categorise its debtors book and profile its debtors, i.e. residential (pensioners, indigent households), business, government or non-governmental organisation. This will assist a municipality with developing different collection strategies according to the type of debtor, and guide the appropriate deployment of resources when collecting outstanding debt. Municipalities need to know the make-up of their debtors book and be able to analyse the debt, i.e. valuation objections, accounts handed over to attorneys for collection or indigent debt.

Municipalities should target the arrear accounts and collect the biggest and longest outstanding account first. In addition, a municipality must have mechanisms/systems in order to place an immediate block on prepaid meter purchases.

The policy should make provision for electricity supply to be disconnected for any municipal debt.

CASE LAW 1: JOSEPH & OTHERS VS CITY OF JOHANNESBURG MM & OTHERS (CC 9 OCT 2009)

In Joseph v City of Johannesburg and others the Constitutional Court ruled that the disconnection of electricity supply to a block of flats by the City of Johannesburg without prior notice was unlawful and ordered its immediate reconnection.

In this case the owner of a block of flats neglected to pay the electricity bill even though he had received payment from his tenants. The Municipality terminated the electricity supply to the building, without giving prior notice to the tenants. The tenants contended that the Municipality was obliged to give them a fair hearing before disconnecting the electricity as the disconnection materially and adversely affected their rights. The tenants also challenged the City's bylaws in so far as it restricted the duty to afford procedural fairness only to "customers" of the City.

In a unanimous judgment, the court held that the City was obliged to afford the tenants procedural fairness before taking a decision that would materially and adversely affect that right. That procedural fairness required that the tenants were entitled to 14 days pre-termination notice in the form of a physical notice placed in a prominent position in the building. The tenants could then challenge the proposed termination or tender appropriate arrangements to pay off the arrears.

3.6 Conditions for reconnection or reinstatement of terminated or restricted services

Municipalities could appoint a panel of legal advisors who will act on instruction and on behalf of a municipality for a period of three (3) years. The legal advisors should have the capacity to handle cases through to the courts of law. Contracts must be well managed and payment should be in the form of commission, based on the success of their activities to collect arrears. The recommendation is that consumers should make direct payments to the municipality rather than to the collecting agent.

Municipalities should enact bylaws and take action as prescribed by the policy. The wording of the policy and the definitions thereto are important to prove cases of theft, tampering and malicious damage to property. Legal advice should be sought in order to develop a policy and a bylaw which will stand in a court of law.

Limiting prepaid purchase is very effective in getting consumers to pay or to make arrangements with the municipality. Municipalities should therefore ensure that their financial systems are integrated or capable of being integrated where required.

Exception reports should be generated on a monthly basis where consumption is not as expected. Municipal officials should conduct physical inspections of properties with prepaid meters where the current purchase is not in line with expected consumption of a typical household/property. The eThekweni Metropolitan Municipality has a municipal court, which deals with cases where bylaws have been violated. Individuals with an understanding and knowledge of the municipal system and municipal bylaws deal with these cases.

3.8 Services not reconnected or reinstated after a specified period

Action should be taken by a municipality if no payment is made or arrangement entered into within a specified period after services have been terminated or restricted.

The general view is that outstanding debt which a municipality can still collect, should not be handed over to external debt collecting agents/attorneys, but should as far as possible be collected by the municipality's own in-house debt collection unit. Only when it is probable that the municipality will not succeed in collecting, the outstanding debt should be handed over for collection and only if the action can be defended in a court of law, otherwise the municipality must write off the debt as irrecoverable against provisions.

Reasons for problems in obtaining outstanding debt are usually failure to respond to disconnection points towards possible illegal tampering and bypassing of the system as well as problem buildings where illegal activities are taking place and no payment is received for municipal services consumed.

A municipality should conduct physical inspections of all properties where services have been terminated on a regular basis, monitor the conventional meter readings and prepaid meter purchases to trace any indication of illegal consumption.

Buildings identified as problem buildings should be profiled per ward, services discontinued and the said buildings targeted for sale in execution. Security guards should be placed in the buildings to protect the property and the cost thereof should be added to the account.

As a result of the amalgamation of municipalities, municipalities may find it difficult to trace the origin of old debt, as this is not supported by any paper work from the previous municipalities.

The Prescription Act, 1969 allows for the writing off of any uncollectable debt older than three (3) years in the case of service charges and thirty (30) years in the case of property rates.

In order to be able to write off debt annually, municipalities must provide for the write-off in their budgets and the write-off procedure must be included in the policy, depending on the delegations of a municipality.

Arrears which arise prior to the adoption of the present Credit Control and Debt Collection policy should be considered separately by Council. Council should consider the outstanding amount of such arrears, the period over which the default occurred, the probability of collecting and whether the account holder concerned is registered as an indigent in terms of the municipality's Indigent Management policy.

3.11 Housing Schemes

The administration and management of housing schemes is a challenge in all municipalities, as they are obliged to provide alternative accommodation where people have been evicted from municipal housing schemes.

In an attempt to address this challenge, municipalities would be better advised to transfer such properties into the name of the owner; and instead of bulk meters, install individual meters and water management devices.

3.12 Councillor and Staff Debtors

Councillors and staff members of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than three (3) months.

Municipalities face the challenge that the basic conditions of employment do not permit the deduction of more than 25% of the employee's remuneration for debt.

Municipal employees should be treated like any other customer of the municipality and the full provisions of the policy should be applied.

All new appointees (councillors and staff members) indebted to a municipality must enter into an agreement with the municipality for the payment of arrear accounts; automatic salary deductions should be done, informed by affordability of the debtor; bonuses and salary increments should be targeted; and on resignation, the full amount owing should be deducted from monies owed to the councillor or staff member. There should be monthly reporting to the Speaker's Office and Council on the outstanding councillor and staff debt.

3.13 Additional measures available to municipalities

CASE LAW 4: GUNDWANA vs STEKO DEVELOPMENT CC & OTHERS (CCT 44/10)

Elsie Gundwana appealed to the Constitutional Court against an order evicting her from her home, from which she runs a bed & breakfast business. Gundwana claimed that her property was improperly sold in execution to Steko Development CC, which now sought her eviction. Part of her case related to the constitutionality of the Registrar (as opposed to a judge) to authorize a Sale in Execution.

The court held that the High Court Registrar cannot authorize the sale of a person's home. A judge must be approached and cause must be shown why the sale of a person's home would be justifiable in all the circumstances of that particular case. While execution against mortgaged property is an ordinary part of economic life, an agreement to put one's property at risk as security in a mortgage does not equate to a license for banks to sell a property in bad faith, or where it would otherwise be a disproportionate way to recover a debt.

One of the important factors is the amount of the arrears at the time of execution.

Elsie Gundwana was in arrears by R5 200, 00. It may not be justifiable to order a sale where the amount of the debt outstanding is very small and there are other ways to collect the debt. Only a judge could consider this question and evaluate each case on its merits.

If it is the primary property of the defaulter, the court will have the discretion whether or not to grant judgment, thereby declaring the property especially executable. Where a municipality has already attached movables before attaching the property, the court is inclined to grant execution against the property.

CASE LAW 5: MKONTWANA vs NELSON MANDELA BAY MM & ANOTHER (CCSA 6 OCT 2004)

The matter before the Court concerned the constitutional validity of laws that burden property owners with the consumption charges for water and electricity supplied to tenants. Section 118(1) of the Municipal Systems Act (32 of 2000) provides that the Registrar of Deeds may not affect the transfer of any property without a certificate issued by the municipality to the effect that the consumption charges due during a period of two years before the date of the issue of the certificate have been paid.

Mkontwana rented out his property and the tenant contracted with the municipality for the provision of municipal services. Mkontwana was unwillingly to take responsibility of the debt of the tenants when applying for clearance in terms of Section 118(1) of the Municipal Systems Act (32 of 2000). The municipality on the other hand was only willingly to provide clearance upon payment of all outstanding debt, including the debt of the tenant.

The fundamental finding in this case 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. Municipalities, however, need to ensure that all systems can support the provision of a duplicate account to the owner if requested. Credit control and debt collection policy also needs to include the fundamental finding in this case, namely that owners will be held responsible for the accounts of tenants when amongst other applying for clearance in terms of section 118 of the Systems Act (32 of 2000).

CASE LAW 9: CITY OF JOHANNESBURG MM VS EVAN GRAND 6 CC (SCA 27 NOV 2008)

The issue in this case is whether a municipality is obliged, against payment by an insolvent person of the proceeds of the sale of its immovable property, to issue a certificate that the property rates and other fees payable to it in connection with the property 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 (66 of 1965). The amount owed to the municipality in respect of the four properties was R80 000. However, Evan Grand 6 CC contended that, in terms of section 89 of the Insolvency Act (24 of 1936), the appellant 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 that had become due during the two years preceding the date of application for the certificate were substantially more than R17 000 (some R80 000, as indicated above) the municipality refused to issue a clearance certificate. Evan 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 (47 of 1937), valid for a period of no less than two months in respect of the particular properties.

The judge provided the following on behalf of the Supreme Court of Appeal: "Section 118(1) of the Municipal 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 Section 118(3). Section 118(1) is therefore not affected by the provisions of Section 34(7) (a), which deals with the order of preference applicable upon the distribution of an estate being administered in terms of Section 34(2). It follows that, in so far as the claim of the appellant is given preferential treatment in terms of Section 118(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 Section 34(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 Municipal Systems Act 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.

3.13.3 Approval of building plans

A municipality should only approve building plans once all debt owing on the property or owed by the applicant has been settled or a payment agreement has been entered into with the municipality. This should be provided for in the policy.

3.13.4 Procurement of goods and services by a municipality

The policy should clearly state that the municipality will not do business with any individual or entity owing money to the municipality, nor does it provide municipal services to such. Tenders should not be awarded to an entity with an outstanding municipal debt; the account must be paid up before the tender can be awarded. In the case of SMEs, tenders below a certain threshold, e.g. R200 000, may be awarded pending the service provider entering into an agreement with the municipality to settle the arrear account from payments due to the service provider. Creditors should not be paid until the debt owed to the municipality is settled, or there is an offset against monies owed. Any refunds due against a particular property must be offset against arrear accounts of the debtor.

CASE LAW 13: NELSON MANDELA BAY MM VS NOBUMBA & OTHERS (HC OF E CAPE 5 NOV 2009)

The Nelson Mandela Bay Metropolitan Municipality had instituted action against Nobumba for unpaid rates and municipal service charges which were due. On applying for summary judgment, the magistrate hearing the matter struck the matter from the roll on the basis that the National Credit Act (34 of 2005) applied and had not been complied with by the municipality. The municipality subsequently brought an application to review and set aside the decision.

The judgement supports the fact that the National Credit Act (34 of 2005) 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.

CASE LAW 14: MAZIBUKO & OTHERS VS CITY OF JOHANNESBURG MM & OTHERS (CCSA 8 OCT 2009)

This case dealt with the interpretation of section 27(1) (b) of the Constitution which provides that everyone has the right to have access to sufficient water. Mazibuko and others challenged the legality of the installation of pre-paid water meters against the background of section 27(1) (b) of the Constitution. The case concerns two major issues: the legality of the installation of pre-paid water meters; and the amount of free kilolitres of water to be allowed per household and if this is in conflict with section 27 of the Constitution or section 11 of the Water Services Act (108 of 1997).

The judge ruled 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.

Flowing from this judgement municipalities can continue with the installation of pre-paid water meters. Although no real reference was made to the amount of free basic kilolitres of water in the final judgement, 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.

These guidelines are to be found in regulation 3 of the regulations made in terms of Water Services Act (108 of 1997) under Government Notice 509 of 8 June 2001; and sub-regulation (b) stipulates the minimum basic supply of water as 25 litres per person per day or 6 kilolitres per household per month.

3 OBJECTIVES OF THE POLICY

The objectives of this Policy are to:

- 3.1 define a framework within which the municipality can develop an effective procedure to bill and collect its revenues;
- 3.2 ensure that all monies due and payable to the municipality are collected in full and used to deliver municipal services in the best interest of the community, residents and ratepayers and in a financially sustainable manner as prescribed by the Municipal Systems Act, 2000 (Act No, 32 of 2000), and other applicable legislation;
- 3.3 enable the implementation of this Policy throughout the _____ Local Municipality;
- 3.4 effectively and efficiently deal with defaulters in accordance with the terms and conditions of this Policy;
- 3.5 promote a culture of payment and instill a sense of responsibility towards the payment of municipal accounts and reduction of municipal debt;
- 3.6 ensure compliance with the National Credit Act.

4 PRINCIPLES

- 4.1 The administrative integrity of the municipality must be maintained at all times. The democratically elected councillors are responsible for policy-making, while it is the responsibility of the Municipal Manager to ensure the execution of these policies.
- 4.2 All customers must complete an official application form, formally requesting municipal services. Existing customers may be required to complete new application forms from time to time, as determined by the Municipal Manager.
- 4.3 A copy of the application form, including conditions of services, must be handed to every new customer on date of application for services. All customers must be informed of the contents of the Council's Credit Control and Debt Collection policy and a copy made available to any customer on request.
- 4.4 Billing is to be accurate, timeous and understandable.
- 4.5 The customer is entitled to reasonable access to pay points and to a variety of reliable payment methods.
- 4.6 The customer is entitled to an efficient, effective and reasonable response to appeals, and should suffer no disadvantage during the processing of a reasonable appeal.
- 4.7 Enforcement of payment must be prompt, consistent and effective.
- 4.8 Unauthorized consumption, connection and reconnection, the tampering with or theft of meters, service supply equipment and the reticulation network and any fraudulent activity in connection with the provision of municipal services will lead to disconnections, penalties, loss of rights and criminal prosecutions.
- 4.9 Incentives and disincentives may be used in collection procedures.
- 4.10 There must be legal cause between the municipality and its customer, and customer debt must arise out of a legal framework and must be legally collectable.

"billing" refers to the process of charging for services provided by issuing accounts;

"by-law" means a legislation that is made by a decision taken by the Council of the municipality binding in the municipality on the persons to whom it applies and is published in terms of section 13 of the Municipal Systems Act;

"credit control" refers to the action/s required to safeguard revenue including disconnections, reconnections, normalising installations and follow-up procedures and data integrity;

"Credit control and debt collection" is the function relating to the effective collection of any monies due and payable to a municipality;

"Municipal consumer debt" refers to the non-payment or late payment by consumers of property rates and municipal services (water, electricity, sanitation, refuse removal), traffic fines and rental housing payments, and includes any amounts considered as irrecoverable;

"Council" means the Council of the Local Municipality of _____. A structure or person exercising delegated authority and power or carrying out an instruction in terms of these by-laws or a service provider fulfilling the responsibility under these by-laws;

"commercial customer" means a customer other than a domestic customer and an indigent customer, including, but not limited to, a business or an industrial, governmental or an institutional customer;

"connection" means the point at which a customer gains access to municipal services;

"customer" means a person with whom the municipality has concluded or is deemed to have concluded an agreement for the provision of a municipal service;

"creditor agreement" means a credit agreement as defined in the National Credit Act in No. 34 of 2005, including an incidental credit agreement;

"continuous service" means the supply for consideration of a municipal service with the intent that as long as the agreement to supply the service remains, the Municipality will make the service continuously available to be used by the consumer from time to time as determined by the consumer;

"chief financial officer" means the official of the Municipality responsible for the collection of moneys owed to the Municipality and/or any other staff member to whom he/she has delegated duties and responsibilities in terms of this Policy;

"defaulter" means a customer who owes arrears to the municipality;

"domestic customer" means a customer who, primarily for residential purposes, occupies a dwelling, structure or premises;

"due date" means the date on which an amount payable in respect of an account becomes due, owing and payable by a customer, which date shall not be more than 30 days after the date on which the account has been sent to the customer concerned;

"debt collection" refers to the debt recovery process and includes sanctions (warning, disconnection, adverse credit rating, legal process and/or eviction, etc.) to be applied in the event of non-payment of accounts;

"disconnection" means interrupting the supply of water or electricity to a debtor as a consequence of ignoring a notice for payment;

"effective disconnection" includes, inter alia, the physical removal of connections and/or equipment as a consequence of unauthorised reconnection (tampering and/or by-passing) of the disconnected service;

"emergency situation" means a situation that would, if allowed to continue, pose a substantial risk, threat, impediment or danger to the present or future financial viability or sustainability of the municipality or to a specific municipal service;

"estimated consumption" means the consumption that a customer, whose consumption is not measured during a specific period, is deemed to have consumed and that is estimated by taking into account factors that are considered relevant by the municipality and which may include the consumption of municipal services by the totality of the users of a service within the area where the service is rendered by the municipality, at the appropriate level of service, for a specific time;

"financial year" means a year ending 30 June;

"holistic" or "consolidated" refers to the combining of all debt in order to establish the total obligation the debtor has to the Municipality;

"household" means a family unit that is determined by the municipality to be traditional by taking into account the number of persons in the unit, the relationship between the members of a household, their ages and any other factor that the municipality considers to be relevant;

"illegal connection" means a connection to any system through which a municipal service is provided and that is not authorized or approved by the municipality;

- control of such premises is vested as curator, trustee, executor, administrator, judicial manager, liquidator or legal representative, as the case may be;
- (c) where the municipality is unable to determine the identity of the owner, a person who has a legal right in or the benefit of the use of any premises, building, or any part of a building;
 - (d) where a lease has been entered into for a period of 30 (thirty) years or longer or for the natural life of the lessee or any other person mentioned in the lease or is renewable from time to time at the will of the lessee indefinitely or for a period or periods which, together with the first period of the lease, amounts to 30 years, the lessee or any other person to whom he has ceded his right, title and interest under the lease or any gratuitous successor to the lessee;
 - (e) in relation to:
 - (i) a piece of land delineated on a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No 95 of 1986), the developer or the body corporate in respect of the common property, or
 - (ii) a section as defined in the Sectional Titles Act, 1986 (Act No 95 of 1986), the person in whose name such section is registered under a sectional title deed and includes the lawfully appointed agent of such a person; or
 - (iii) a person occupying land under a register held by a tribal authority or in accordance with a sworn affidavit made by a tribal authority;

"parked arrears" refers to those monies that were put on hold by some of the former Councils which now constitute the Municipality of _____;

"payment" refers to any form of redemption acceptable to the Council of _____ from time to time towards the balance on an account;

"person" means any person, whether natural or juristic, and includes but is not limited to any local government body or like authority, a company or close corporation incorporated under any law, a body of persons whether incorporated or not, a statutory body, public utility body, voluntary association or trust;

"premises" means any piece of land, the external surface boundaries of which are delineated on

- (a) a general plan or diagram registered in terms of the Land Survey Act No. 9 of 1927 or in terms of the Deeds Registries Act No. 47 of 1937;
- (b) a sectional plan registered in terms of the Sectional Titles Act No. 95 of 1986; or
- (c) a register held by a tribal authority or in accordance with a sworn affidavit made by a tribal authority;

and, where the text so requires, includes any building, structure or the like erected on such land;

"public notice" means publication in the media including one or more of the following:

- (a) publication of a notice, in at least two of the official languages in general use within the Province or area in question and, where possible, the notice shall be published in a newspaper appearing predominantly in the language utilised in the publication of the notice:
 - (i) in any local newspaper or newspapers circulating in the area of supply of the municipality;
 - (ii) in the newspaper or newspapers circulating in the area of supply of the municipality determined by the council as a newspaper of record; or
 - (iii) on the official website of the municipality;
 - (iv) by means of radio broadcasts covering the area of supply of the municipality;
- (b) displaying a notice in or at any premises, office, library or pay-point of either the municipality or of its authorized agent and to which the public has reasonable access; and
- (c) communication with customers through public meetings and ward committee meetings;

"prescribed tariff or charge" means a charge prescribed by the Municipality;

"residential debtors" are classified as those debtors who qualify for and receive free electricity and/or water;

"non-residential debtors" are classified as those debtors who do not qualify for or receive free electricity and/or water;

"shared consumption" means the consumption by a customer of a municipal service during a specific period and that is calculated by dividing the total metered consumption of that municipal service in the supply zone where the customer's premises are situated for the same period by the number of customers within the supply zone during that period;

"subsidised service" means:

- (a) a municipal service which is provided to a customer at an applicable rate which is less than the cost of actually providing the service and includes services provided to customers at no cost;
- (b) an area, as determined by the Council, within which all customers are provided with services from

- To review and evaluate the policy and bylaws in order to improve the efficiency of Council's credit control and debt collection procedures, mechanisms and processes.
- To report to Council.

6.3 Duties and Functions of Ward Councillors

- To hold regular ward meetings wherein the Credit Control and Debt Collection policy and procedures of Council are addressed.
- To adhere to and convey council policies to residents and ratepayers and in particular the credit control and debt collection policy and procedure.
- To adhere to the Code of Conduct for Councillors.
- To act in terms of roles and functions as approved by Council and assist in the dissemination and distribution of information.

6.4 Responsibilities of all councillors

- To always pay amounts that are owed in respect municipal rates, taxes and services as required by section 12A of Schedule 1 of the Municipal Systems Act and not to default on payments for a period longer than 3 months.
- The municipality may deduct any outstanding amounts from a councillor's allowance, if the councillor has not paid amounts that are due to the municipality for more than 3 months.
- The normal credit control procedures shall also apply to any arrear account of a councillor.
- All agreements with Councillors must not exceed the expiry date of the term of office.

6.5 Duties and Functions of the Municipal Manager

The Municipal Manager, as the accounting officer of the municipality, must take all reasonable steps to ensure that –

- the municipality has effective revenue collection systems consistent with Section 95 of the Act and the Municipality's Credit Control and Debt Collection bylaws and the National Credit Act;
- revenue due to the municipality is calculated on a monthly basis;
- accounts for municipal tax and charges for municipal services are prepared on a monthly basis;
- all money received is promptly deposited into the municipality's primary and other bank accounts;
- the municipality has and maintains a management, accounting and information system which recognises revenue when it is earned; accounts for debtors; and accounts for receipts of revenue;
- the municipality has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed;
- the municipality charges interest and other permissible charges on arrears, except where the Council has granted exemptions;
- all revenue received by the municipality, including revenue received by any collecting agent on its behalf, is reconciled regularly;
- the accounting officer must immediately inform the National Treasury of any payments due by an organ of State to the municipality in respect of municipal tax or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.

6.5 Responsibilities of all municipal staff

- To always pay amounts that are owed in respect of municipal rates, taxes and services and not to default on payments for a period longer than 3 months.
- The municipality may deduct any outstanding amounts from a staff member, if the staff member has not paid amounts that are due to the municipality for more than 3 months.
- The normal credit control procedures shall also apply to any arrear account of a councillor.
- Where the municipality provides temporary employment to members of the community who are in arrears with payments for municipal rates and services they will be required to enter an agreement to pay 20% of their gross remuneration towards these arrears of debt.

6.7 Duties and Functions of Communities, Ratepayers and Residents

The responsibilities of communities, ratepayers and residents are to

- pay deposits, service fees, rates on property and other taxes, levies and duties imposed by the municipality;

number, the names, addresses and all relevant contact particulars of all the business' directors, members, trustees, proprietors or partners.

- 8.5 An applicant must provide any information and documentation which the municipality requires.
- 8.6 If an applicant for municipal service is an existing customer of the municipality in respect of any other municipal service and such customer has an outstanding amount that is due and payable to the municipality:
- the arrears must be paid; or
 - an agreement for payment of arrears must be concluded with the municipality before an application for services can be approved.

- 8.7 The municipality will render the first account after the first meter reading cycle to be billed following the date of signing the service agreement.

- 8.8 Consumers who illegally consume services without this agreement will be subject to punitive action.

8.9 PROPERTY DEVELOPMENTS

- (a) A property developer must inform the municipality of the nature and extent of the municipal services or services that will be provided as well as the measuring devices that will be used.
- (b) A property developer who fails to comply with the provisions of sub-paragraph (a) shall be liable for the payment of all the applicable charges that would have been payable by customers in respect of municipal services that have been used or consumed by such customers.

9 TERMINATION OF SERVICES

- 9.1 It is the responsibility of the consumer to notify the municipality when municipal services are no longer required due to the sale of the property or other reasons.
- 9.2 Failure to comply with the provision of paragraph 9.1 above renders the consumer liable for all service charges and interest thereon accumulated from the date when the premises are vacated to the date when Council becomes aware of such vacation.
- 9.3 A customer may terminate an agreement for the supply of municipal services by giving at least 21 (twenty-one) days written notice to the municipality of such termination.
- 9.4 The municipality may terminate an agreement for the supply of municipal services by giving at least 21 (twenty-one) days' written notice to a customer where:
- (a) municipal services were not utilised by such customer for a consecutive period of 2 (two) months and without an arrangement, to the satisfaction of the municipality, having been made for the continuation of the agreement; or
- (b) premises have been vacated by the customer concerned and no arrangement for the continuation of the agreement has been made with the municipality provided that, in the event of the customer concerned not being the registered owner of the premise, a copy of the aforesaid notice shall also be served on such registered owner.
- 9.5 A customer shall remain liable for all arrears and applicable charges that are payable for municipal services rendered prior to the termination of an agreement.

10 PAYMENT OF A DEPOSIT

- 10.1 Every consumer must, on application for the provision of municipal services, pay a deposit to the municipality prior to the provision of any municipal services, the amount of which shall be determined by the Council of the municipality by resolution from time to time.

prescribed charge, the municipality may alter the amount so charged and recover from him/her the difference between the altered charge and the amount initially charged to him/her.

- 12.3 If amendments to the applicable charge become operative on a date between measurements and/or meter readings for the purpose of rendering an account for services rendered,
- (a) it shall be deemed that the same quantity of municipal services was provided to the customer for each period of twenty-four (24) hours during the interval between the measurements and/or meter readings as the case may be; and
 - (b) any fixed charge shall be calculated on a pro-rata basis in accordance with the charge that applied immediately before such amendment and such amended applicable charge.

12.4 "Full and final settlement" of an amount

Where an account is not settled in full, any lesser amount tendered to and accepted by the municipality shall not constitute a full and final settlement of such an account despite the fact that the payment was tendered in full and final settlement unless the Municipal Manager or his nominee or the manager of the municipality's authorised agent expressly accepts such payment in writing as being in full and final settlement of the amount reflected on the relevant account.

12.5 Responsibility for payment of amounts due and payable

- (a) Notwithstanding any other provision in this policy, an owner of premises shall be liable for the payment of any amount that is due and payable to the municipality by a customer who is a lessee or occupier of such premises to which municipal services have been provided for the preceding two years, if the municipality, after having taken reasonable steps to recover from such customer any amount due and payable by him/her, could not do so.
- (b) Subparagraph (1) must not be construed as absolving the municipality from its responsibility to collect outstanding amounts in respect of municipal services provided to premises from the customer who has benefited therefrom nor for timeously informing the owner of the premises concerned that the occupying customer has defaulted in making payments due to the municipality in respect of rendered municipal services.
- (c) Despite subparagraph (1) but subject to any law governing prescription, the municipality may collect amounts owing to it for a period in excess of two years through due legal process.

12.6 Dishonoured payments

- (a) If the drawer of the cheque, or the consumer who received value from the depositing of the cheque, is an existing consumer of Council, the reversal and penalty fee may be debited to an account of the drawer or beneficiary and a letter of notification must be sent to the consumer. Such fee shall be deemed to be a tariff charge and shall be recovered from the consumer. Council reserves the right to refuse to accept further cheques from the drawer or beneficiary, to place the matter on the National Adverse Credit Listing and also institute legal action which may include criminal charges against the offender.
- (b) If the drawer of the cheque is not an existing debtor of Council, then a sundry debtor account is opened and the debit and penalty is raised. Once the account is submitted and the debtor fails to honour the cheque and pay the penalty within 14 days of receipt, a final demand is generated and submitted. If there is still no response, then the matter shall be handed over for placement on the National Adverse Credit listing and/or legal action that may include criminal charges being instituted against the offender.
- (c) If the drawer of the cheque, or the debtor who received value from the depositing of the cheque, is an existing debtor of Council, the reversal and penalty fee may be debited to an account of the drawer or beneficiary and a letter of notification must be sent to the debtor. Such fee shall be deemed to be a tariff charge and shall be recovered from the debtor. Council reserves the right to refuse to accept further cheques from the drawer or beneficiary and also institute legal action which may include criminal charges against the offender.
- (d) Unpaid cheques in respect of motor vehicle licensing and payment of fines shall be dealt with in accordance with paragraph 12.6 or be forwarded to the relevant authority for further action.

- 13.7 If an agreement falls under the National Credit Act and the interest that is payable varies, the municipality shall provide the notice that is required in terms of Section 104 of the National Credit Act every time the interest varies. The notice must stipulate the new rate.
- 13.8 If an agreement falls under the National Credit Act, the Municipality, in addition to the interest charged, can only charge collection costs and default administration charges.
- 13.9 The interest that is payable cannot exceed the capital amount that is owed by the consumer at any time.
- 13.10 If an agreement is a credit agreement in terms of the National Credit Act, the interest and all permissible charges cannot exceed the capital amount owned at any time.

14 ACCOUNTS AND BILLING

- 14.1 A municipality shall provide every person liable to pay for municipal services assessments rates and taxes with an account in respect of every property for which that person is liable and all services rendered in respect of that property at the address last recorded with the municipality.
- 14.2 Failure by the municipality to render an account does not relieve a consumer of the obligation to pay any amount due and payable. The onus shall be on the consumer to obtain a copy of the account before the due date.
- 14.3 If a municipal service agreement constitutes a credit agreement in terms of the National Credit Act, the form and content of the account must comply with Section 109 of the National Credit Act, which provides guidance on the form and content of statement of account.
- 14.4 An account rendered by the municipality for services provided to a consumer shall be paid not later than the last date for payment specified in such account, which date will not be more than 30 (thirty) days after the date of the account.
- 14.5 If payment of an account is received after the date referred to in Sub-Section 14.4, interest, as may be prescribed by the municipality, must be paid by the debtor to the municipality.
- 14.6 Accounts will be rendered on a monthly basis in cycles of 30 (thirty) days and shall be payable on the due date as indicated on the account.
- 14.7 Any amount which remains due and payable after the due date shall attract interest. Before charging any interest or charge with regard to outstanding amounts, the municipality shall ensure that it complies with Section 4(6)(b) and Paragraphs 103 -103 of the National Credit Act, where applicable.
- 14.8 Payments shall be deemed to be late unless received on or before the due date by the municipality. Electronic payments and payments made through agents must be received in a municipal bank account by the close of business on the due date.
- 14.9 The municipality may consolidate any separate accounts for which a customer is liable for payment. The municipality may not consolidate debt that is constituted by amounts that fall under the National Credit Act and those that do not fall under the National Credit Act, unless the municipality ensures that the consolidated debt will comply in all respects with the National Credit Act.
- 14.10 If the consumer agreement for the supply of municipal services constitutes a credit agreement in terms of the National Credit Act, any amount that is received from the consumer shall be used to firstly satisfy any due or unpaid interest charges, secondly to satisfy any due or unpaid fees and finally to reduce the principal debt (even if the principal debt is consolidated).
- 14.11 In all other instances where the National Credit Act does not apply, the municipality can allocate the payment as it deems fit unless the consumer has expressly instructed otherwise.

- conduct a daily or weekly check or follow-up on all disputes as yet unresolved.
- II. The following information should be entered into the register:
 - Consumer's Account Number
 - Consumer's name
 - Consumer's address
 - Full particulars of the dispute
 - Name of the official to whom the dispute is given to investigate
 - Actions that have been/were taken to resolve the dispute
 - Signature of the controlling official.
- III. A written acknowledgement of receipt of the dispute must be provided to the consumer.
- IV. The municipality should not institute enforcement proceedings against the consumer for an amount or an account entry that is in dispute until it has resolved the dispute.
- V. If an agreement is a credit agreement in terms of the National Credit Act, the municipality must deliver without charge and at the request of the consumer the following:
 - The current balance of the account
 - The amounts credited or debited during the period specified in the request
 - Any amount currently overdue and when such amount became due
 - Any amount currently payable and the date when it became payable.
- VI. All investigations regarding disputed amounts must be concluded by Council's Chief Financial Officer within 21 (twenty-one) calendar days from receipt thereof.
- VII. The consumer shall be advised in writing of the findings

15.3 Appeal against finding

- (a) A consumer may, in writing, appeal against a finding of the municipality.
- (b) An appeal shall be in writing and shall set out the reasons for the appeal and be lodged with the Municipal Manager within 21 (twenty-one) days from the date the consumer is advised of the findings of the investigation.
- (c) An appeal must be decided by the Council of the municipality at its first ordinary meeting held after the appeal was lodged.
- (d) The decision of the Council shall be final and the consumer must pay any amounts due and payable in terms of such decision within 14 (fourteen) days of him/her being advised of the Council's decision.
- (e) The Council may, in its sole discretion, condone the late lodging of an appeal or other procedural irregularity.
- (f) If the consumer is not satisfied with the outcome of the appeal, he may, under protest, pay the amount in dispute and redress his action in a court of law.

16 ARREARS

- 16.1 A consumer of municipal services and an owner of property must pay any monies owed to the Municipality within the period or before the due date that is indicated on the account.
- 16.2 If a consumer fails to pay the amount/s due and payable on or before the final date for payment, the unpaid amount is in arrear and a final demand notice may be hand delivered or sent, per registered mail, to the most recent recorded address of the consumer, within 7 (seven) working days.
- 16.3 If an agreement falls under the National Credit Act, the municipality should send a letter in terms of Section 129 of the Act advising the consumer about the default and proposing that the consumer refer the matter to a debt councillor, alternative dispute resolution agent, consumer court or ombudsman

such an extension and which the consumer reasonably could not prevent or avoid. Documentary proof of any special circumstances must be furnished by the consumer on request by the municipality.

17.7 In concluding an agreement with a consumer, the arrangement criteria referred to in Sections 16 to 19 shall be applied and, as far as possible, be incorporated into the agreement referred to in this Section.

17.8 The Municipality may, in exercising its discretion under Sub-Section (17.6) have regard to a consumer's—

- (a) credit record;
- (b) consumption;
- (c) level of service;
- (d) previous breaches of agreements for the payment of arrears in installments; and
- (e) any other relevant factors.

17.9 Should a consumer fail to comply with an agreement for the payment of arrears in installments, the total of all outstanding amounts, including the arrears, any interest thereon, administration fees, costs incurred in taking relevant action, and penalties, including payment of a higher deposit, will immediately be due and payable, without further notice or correspondence.

17.10 A consumer may, in the sole discretion of the Chief Financial Officer, be allowed to enter into a new agreement for the payment of arrears in installments where that consumer has failed to honour a previous agreement for the payment of arrears in installments, entered into after the receipt of a discontinuation notice. In the event of such further agreement being permitted, then the arrangements mentioned in Section 21 shall be applied to such consumer on the basis of primary arrangements.

17.11 Where a body corporate is responsible for the payment of any arrear amount to the Municipality in respect of a sectional title development, the liability of the body corporate shall be extended to the members thereof, jointly and severally and the agreement shall reflect this status accordingly.

17.13 A copy of the agreement will, on request, be made available to the consumer.

18 LIMITATION AND DISCONTINUATION OF SERVICE DUE TO FAILURE TO COMPLY WITH FINAL DEMAND

18.1 The municipality shall, within 7 (seven) working days after the expiry of the 14-day period allowed for payment in terms of the final demand:

- (a) limit the provision of services to the defaulter; and
- (b) hand deliver or send, per registered mail, to the last recorded address of the consumer, a discontinuation notice informing him/her that the provision of services will be disconnected within 14 (fourteen) days of the date of the discontinuation notice if —
 - (i) no payment is received within the allowed period;
 - (ii) no agreement is entered into for the payment of arrears in installments; or
 - (iii) no proof of registration as indigent is handed in within the 14-day period allowed.

18.2 A discontinuation notice must contain

- (a) the amount in arrears and any interest payable;
- (b) a statement that the consumer may conclude an agreement with the municipality for payment of the arrears amount in instalments, within 14 (fourteen) days of the date of the discontinuation notice;
- (c) that if no such agreement is entered into within the stated period, the municipality may discontinue the provision of services with immediate effect, notwithstanding any legal action instituted or in the process of being instituted against the consumer for the recovery of the arrear amount; and
- (d) proof of registration, as an indigent consumer, in terms of the municipality's indigent policy must be handed in within 14 (fourteen) days of the date of the discontinuation notice.

- 22.5 Interest will be charged on arrears at an interest rate that shall be determined by Council from time to time.
- 22.6 Interest on arrears in respect of all services and rates may, at the option of the Council, be frozen whilst the consumer adheres to the conditions of an arrangement.
- 22.7 Debtors, excluding housing debtors, who default on three (3) occasions in respect of arrangements made, will be denied the privilege of making further arrangements and the full amount becomes due and payable.
- 22.8 All arrangements should be subject to periodic review.
- 22.9 All services may be disconnected and legal action will be taken against consumers as provided for in this Policy and/or such debt may be referred to third party debt collectors, for recovery.

23 ARRANGEMENT CRITERIA FOR RESIDENTIAL DEBTORS

- 23.1 All consumers who are in arrears and apply to make arrangements to reschedule their debt will, subject to Section 16, be obliged to make the following minimum payment requirements at the time of entering into such arrangement:
- (a) Current account, plus
 - (b) an initial payment towards arrears with the minimum payment being equal to a monthly instalment which will liquidate the arrear amount plus accrued interest thereon within a period of 24 (twenty-four) months.
 - (c) Each following month the consumer will be required to pay:
 - (d) current account, plus
 - (e) an instalment as determined in (b) above.
 - (f) Should the consumer default, payments will be as follows:
 - First Default - Current account + the monthly payment as determined in (b) above increased by 25% of that payment.
 - Second Default - Current account + 50% the monthly payment as determined in (b) above.
 - Final Default - Current account + full arrears.
 - (g) In all cases, failure to respond to notices will result in normal credit control procedures and/or legal processes being followed.

24 ARRANGEMENT CRITERIA FOR NON-RESIDENTIAL DEBTORS

- 24.1 Non-residential debtors may make arrangements to liquidate their arrears where it would be financially beneficial to the Council for them to do so.
- 24.2 The final decision to make these arrangements will rest with the Financial Officer with the authority to sub-delegate.
- 24.3 If any non-residential debtor wishes to make an arrangement for a period of not longer than six (6) months and will pay the first instalment immediately, interest on the arrangement amount may be suspended as long as the terms of the arrangement are maintained.

25 LISTING OF DEBTOR WITH CREDIT BUREAU

- 25.1 Where an account rendered to a consumer remains outstanding for more than 90 (ninety) days –
- (a) the defaulting consumer's name may, at the option of the municipality, be listed with a credit bureau or any other equivalent body as a defaulter, provided that the agreement for the provision of services provide therefore; and

27 RESTRICTION OF SERVICES

If the municipal manager is of the opinion that the termination of services, in the case of a particular property in respect of which the account is in arrear, is not in the best interests of the community – specifically because of the potential endangerment of the life of any person, whether resident in or outside the property concerned – the Municipal Manager may appropriately restrict rather than terminate the services in question.

28 SERVICES NOT RECONNECTED OR REINSTATED AFTER FOUR (4) WEEKS

If services have been terminated or restricted in the case of a property in respect of which the account is in arrear, and the account holder has not paid such arrears, including the interest raised on such account, or made an acceptable arrangement with the Municipal Manager for the payment of the arrear account, including the interest raised on such account, within a period of 28 (twenty-eight) calendar days after the date of termination or restriction of the service(s) concerned, the Municipal Manager shall forthwith hand such account over for collection and such further action as is deemed necessary to the municipality's attorneys or any debt collecting agency appointed by the Council.

Such further action shall include, if necessary, the sale in execution of such property to recover arrear property rates and service charges (if the account holder is also the owner of the property). All legal expenses incurred by the municipality shall be for the account of the defaulting account holder.

29 NOTICES AND DOCUMENTATION

29.1 An order, notice or other document issued by the municipality in terms of this Policy shall be deemed to be duly authorised by the Council of the municipality if signed by the Municipal Manager or by a duly authorised employee of the Council.

29.2 Any notice or other document served on a person by a municipality in terms of any other legislation is regarded as having been served -

- (a) by delivering the notice to him/her personally or to his duly authorised agent; or
- (b) by delivering the notice at his residence or place of employment to a person apparently not less than sixteen (16) years of age and apparently residing or employed there;
- (c) if he has nominated an address for legal purposes, by delivering the notice to such an address; or
- (d) if he has not nominated an address for legal purposes, delivering it to the address given by him/her in his application for the provision of water services, for the reception of an account for the provision of water services;
- (e) by sending it by pre-paid registered or certified post addressed to his last known address;
- (f) in the case of a body corporate, by delivering it to the registered office or the business premises of such a body corporate;
- (g) if service cannot be effected in terms of the aforesaid sub-sections by affixing it to the principal door of entry to the premises, or displaying it on a conspicuous place.

29.3 In the case where compliance with a notice is required within a specified number of working days, such period shall be deemed to commence on the date of delivery or sending of such notice.

29.4 Delivery of a copy of the document shall be deemed to be delivery of the original.

30 UNAUTHORISED RECONNECTION OF WATER/ELECTRICITY SUPPLY (TAMPERING)

30.1 The unauthorised reconnection of, or tampering with a service supply is prohibited and shall constitute a criminal offence that will result in legal action being taken against the person responsible for such unauthorised reconnection or tampering. Where this has occurred, the service reconnected without authorisation or tampered with will be effectively disconnected.

36 RATES

36.1 Annual Rates (and other annual levies)

- (a) Interest will be charged on all overdue accounts at an interest rate that shall be determined by the Council from time to time.
- (b) If an account is not paid by the due date as displayed on the account, a notice shall be issued showing the total amount owed to Council.
- (c) If an account is not settled or there is no response from the consumer to make acceptable arrangements to repay the debt, summons shall be issued and the legal process followed.
- (d) In instances where the rates debt is in respect of municipal property sold by suspensive sale agreement, the collection thereof will be undertaken in terms of the Deed of Sale or any subsequent applicable written agreement between the Council and the consumer.
- (e) At any stage while the debt is outstanding, all reasonable steps shall be taken to ensure that the ultimate sanction of a sale-in-execution is avoided or taken only as a last resort. The Council, however, has total commitment to a sale-in-execution should the consumer fail to make use of the alternatives provided for by the Council from time to time.
- (f) Any consumer may be granted the opportunity of converting to a monthly rates payment arrangement for the following financial year.

36.2 Monthly Rates

- (a) Interest will be charged on all overdue accounts at an interest rate that shall be determined by Council from time to time.
- (b) Consumers may make application to the Council before 31 May each year to pay current and future rates monthly, the approval of which is at the sole discretion of the Chief Financial Officer with the right to sub-delegate.
- (c) The monthly amount payable for current annual rates plus interest will be calculated to allow the total balance of such amount to be paid in equal instalments by the end of that financial year.
- (d) Should the consumer's rates arrears equal the amount of any three monthly instalments or more, the full balance of the annual rates will become due and payable and the account status will be converted from monthly to annual.

36.3 Rates Clearance Certificate

No rates clearance certificate will be issued by the municipality contrary to the provisions of Section 118 of the Local Government: Municipal Systems Act, 2000. Where an undertaking is submitted by an attorney to the municipality to pay all outstanding debt on receipt of the purchase price of the property, the municipality may issue a rates clearance certificate, valid for 90 (ninety) days, after the relevant fee for the certificate was deposited in the municipality's primary account. If the attorney would default to pay the outstanding debt, he will forfeit this arrangement. Debt prior to 2 (two) years that remain unpaid shall remain as a charge against the property and the new owner shall become liable therefore.

36.4 Determination and Collection of Rates

The provisions of the Municipal Ordinance 20 of 1974, the Transkei Municipalities Act and the relevant provisions of the Local Government Transition Act 1993 and the Municipal Systems Act 2000 shall, until repealed or replaced, continue to apply in respect of the determination, application and collection of rates owing to the municipality as well as the seizure and sale of property in execution.

37 INDIGENT MANAGEMENT POLICY

37.1 The Council shall adopt an Indigent Management Policy which shall provide for the procedures and guidelines for the provision of indigent benefits to indigent households in its municipal area.

37.2 The object of the Indigent Support Policy will be to ensure:

- (a) the provision of basic services to the community in a sustainable manner within the financial and administrative capacity of the Council; and

38.10 If the consumer defaults on an arrangement made on the day of eviction, a re-issued Warrant of Ejectment will be obtained and the subsequent eviction process may only be stopped if all outstanding arrears, plus any legal costs, are paid.

38.11 Once an eviction has been carried out by the Sheriff of the Court, no re-instatement of the evicted consumer will be considered.

38.12 Home-ownership Schemes

- (a) Loan instalments and other housing charges are payable by the due date.
- (b) If payment is not received by the due date, a First Contact Letter must be served on the consumer requesting payment and offering the consumer an opportunity to make an arrangement for payment within 14 (fourteen) days from the date of such letter.
- (c) If there is no response to the First Contact Letter, a Letter of Demand must be issued, allowing the defaulter 7 (seven) days as a final opportunity to make an arrangement for payment.
- (d) If the consumer fails to respond to this notice, the legal collection process will commence and the consumer will be responsible for all legal costs incurred by the Council.
- (e) If the amount due on the day of eviction is not paid, repossession of the property will take place and arrangements must be made for resale of the property.

39 IRRECOVERABLE DEBT

The municipal Council may, on recommendation from the Municipal Manager, or any duly delegated official, write off any debt or portion thereof, provided that the municipal Council is satisfied that the debt or portion thereof is irrecoverable or that it will be in the best interest of the municipality to accept part payment of the debt in full and final settlement.

The Executive Mayor may recommend to the municipal Council that any outstanding debt or portion thereof be written off, if in his opinion it would be in the best interest of the municipality, and that the writing off of the debt will not be contrary to the provisions of the Local Government: Municipal Finance Management Act, No. 56 of 2003.

39.1 Debt will be regarded as irrecoverable if:

- (a) all reasonable notifications and cost-effective measures to recover a specific outstanding amount have been exhausted; or
- (b) if the amount to be recovered is too small to warrant further endeavours to collect it; or
- (c) the cost to recover the debt does not warrant further action, i.e. to summons in another country; or
- (d) the amount outstanding is the residue after payment of a dividend in the Rand from an insolvent estate; or
- (e) a deceased estate has no liquid assets to cover the outstanding amount; or
- (f) it has been proven that the debt has prescribed; or
- (g) the consumer is untraceable or cannot be identified so as to proceed with further action; or
- (h) it is impossible to prove the debt outstanding; or
- (i) the outstanding amount is due to an administrative error by Council.

39.2 Authorisation

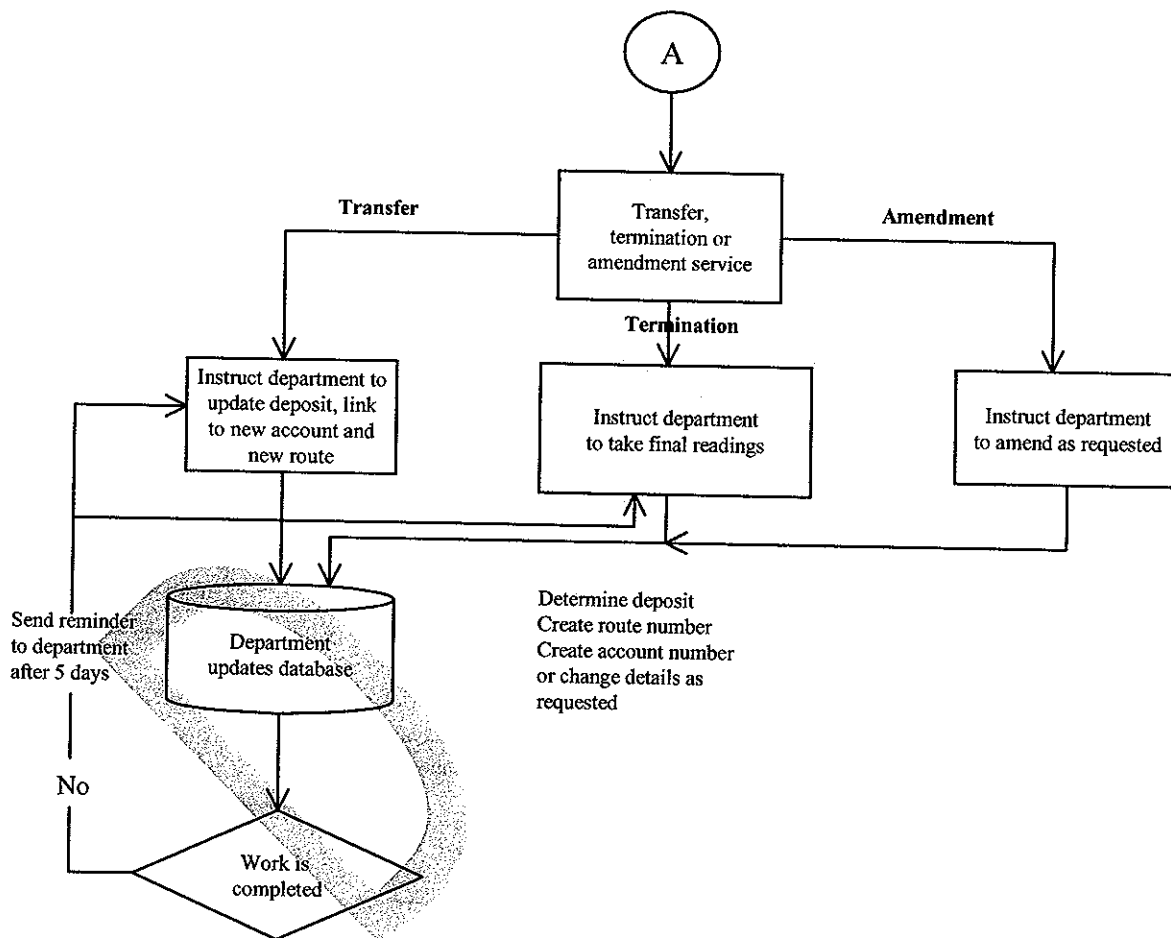
- (a) As rates are deemed to be recoverable in all instances, all requests to write off debt in respect of rates must be presented as individual items to the Chief Financial Officer.
- (b) In respect of other debt, schedules indicating the consumer account number, the consumer's name, the physical address in respect of which the debt was raised, erf number, if applicable, amount per account category as well as the steps taken to recover a debt and a reason to write off the amount, must be compiled and submitted to the Council for consideration with a view to writing off such debt as irrecoverable.
- (c) Notwithstanding the above, Council or its authorised officials will be under no obligation to write off any particular debt and will always have the sole discretion to do so.
- (d) An accounting officer must ensure that all debts written-off are done in accordance with a

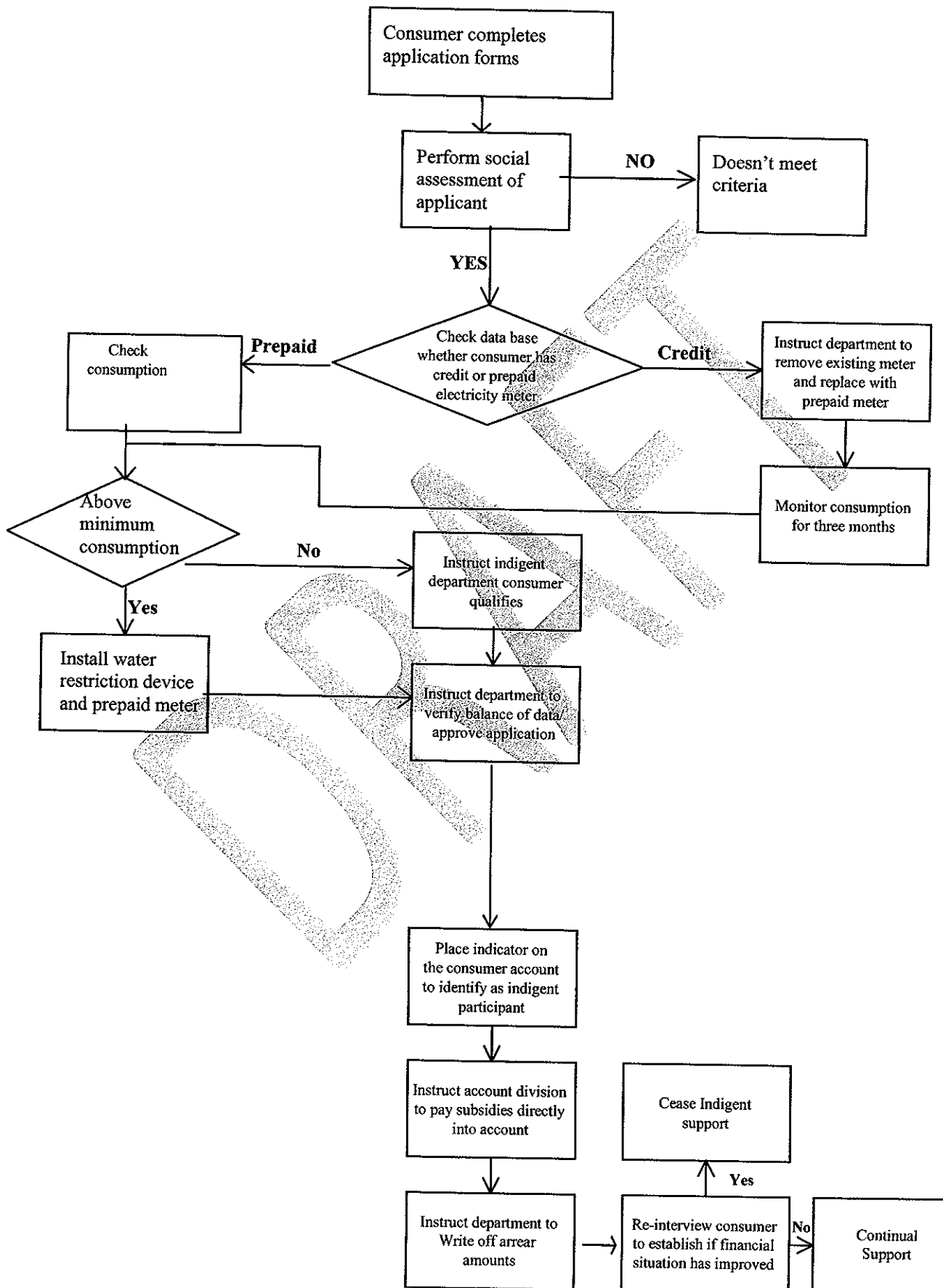
5. WORK FLOW PROCESSES

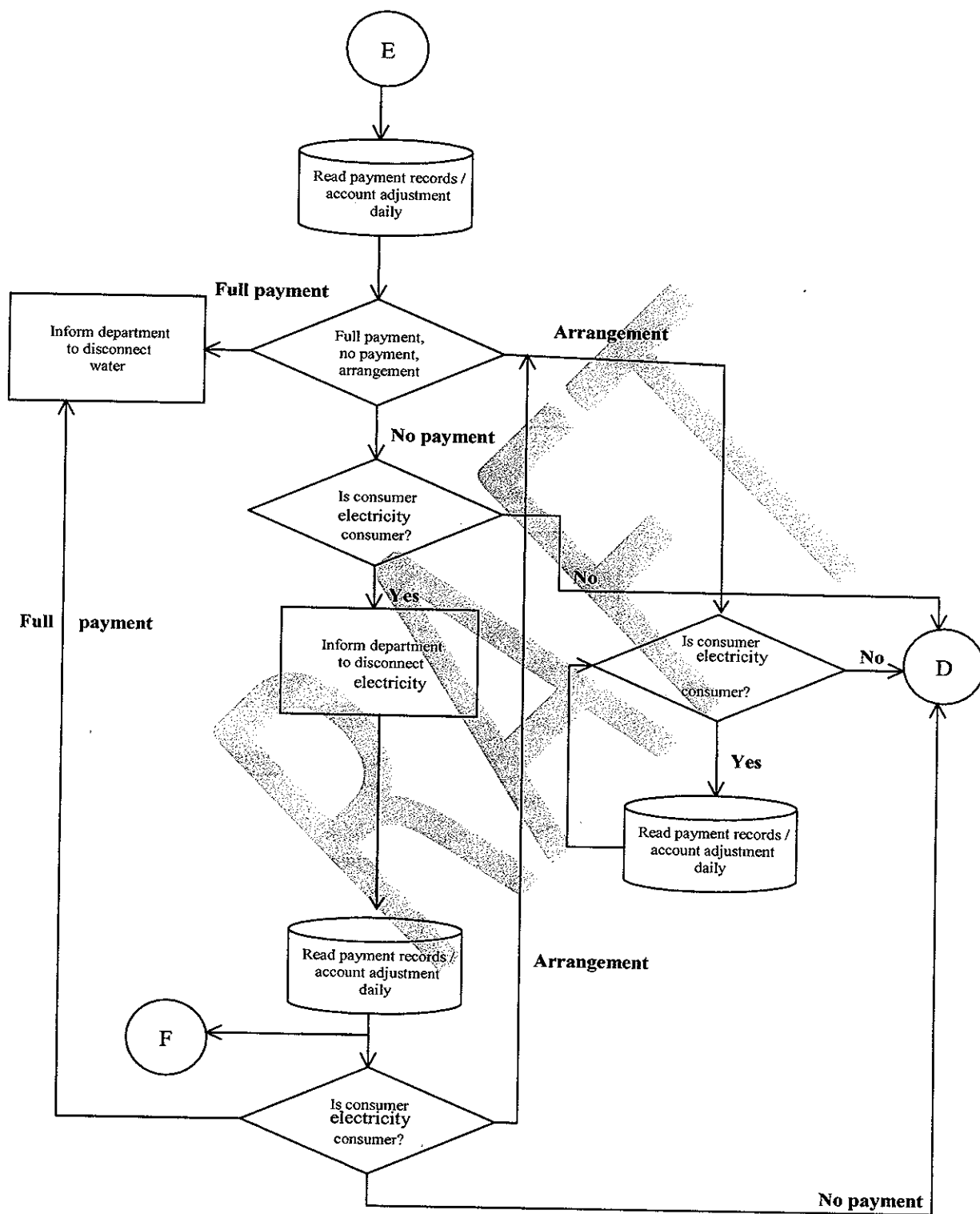
Below are examples of some of the workflow processes which municipalities should have in support of the implementation of the Credit Control and Debt Collection policies.

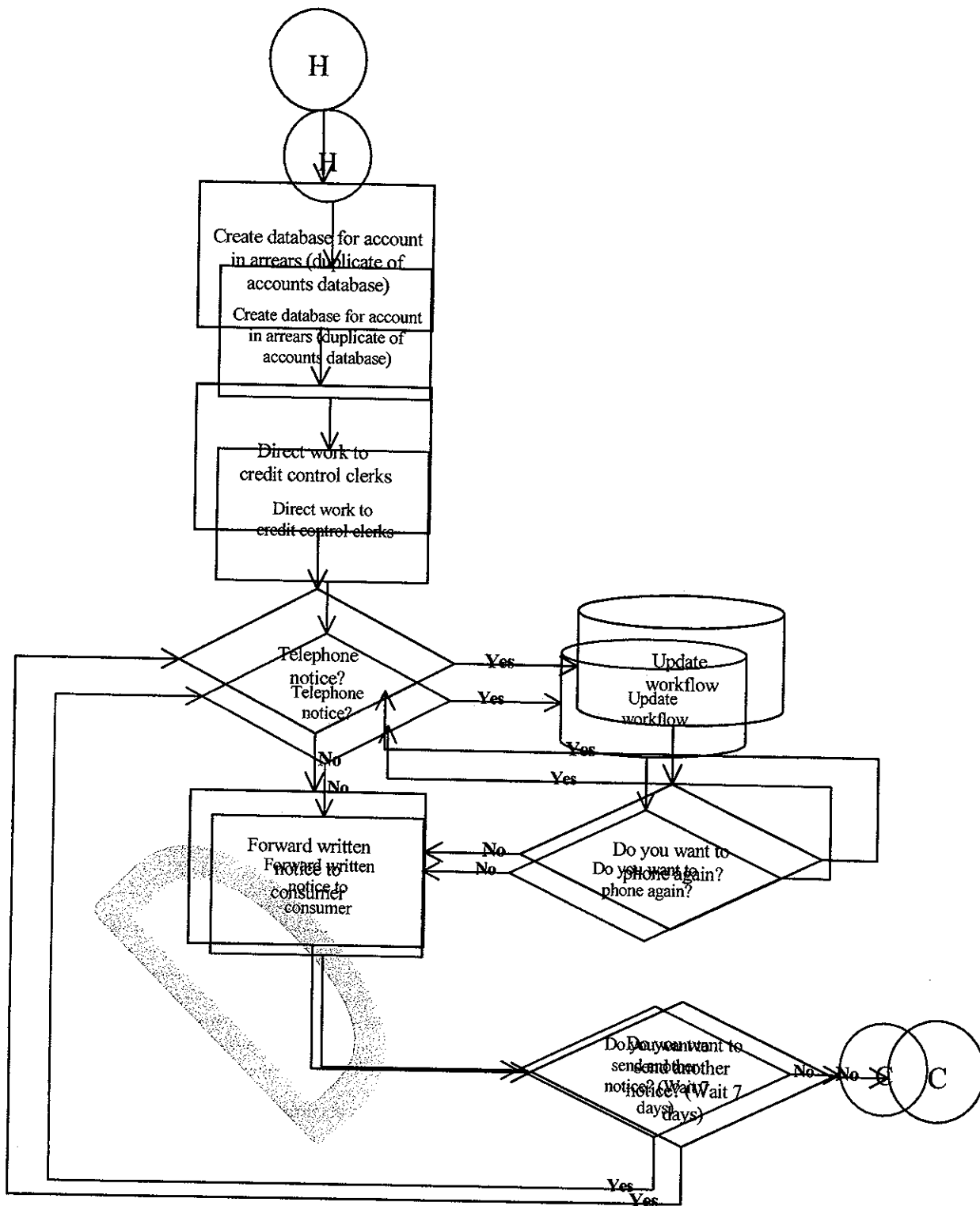
- (a) Municipal services application process
- (b) Indigent support application process
- (c) Arrears management

1 APPLICATION FOR SERVICES



APPLICATION FOR INDIGENT SUPPORT





(In/out community of property/Marital Status Contract /Divorced)

List of other accounts held : 1..... Account No.
2..... Account No.
3..... Account No.
Previous municipal account Account No.
Occupiers of stand other than family (rental, backyard lodgers, spaza shops, taxis, etc.):

Number of people residing on property Over 18 Under 18

APPLYING FOR INDIGENT SUPPORT?

YES ☐

NO ☐

Total income of household if applying for indigent support: (Include all sources of revenue of all the persons residing on the site)
R



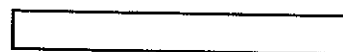
Fax



Post



E-mail



E-mail address

Method of account delivery: (tick appropriate box)

Name and address of a family member and/or friend not residing at the same address:

Tel. No.

If not the owner, to whom do you pay rent?

Tel. No.

C. TO BE COMPLETED BY OWNER/AGENT/CARETAKER FOR LEASED PROPERTIES

Surname: First Name:
Street Address: ID NUMBER:
Name of Employer:
Date: Signature:

I confirm that the applicant has concluded a lease agreement in respect of the property as set out above and I understand that should the applicant fail to make payment in respect of the services as agreed, I will be the debtor of last resort and liable for payment of any outstanding balance due and owing to the municipality.

D. DECLARATION BY APPLICANT

I/we hereby declare that I/we agree to the conditions of supply of the mentioned services as laid down in the by-laws of the Municipality and any other laws that are applicable. I specifically acknowledge that I/we with my/our signature hereto, I/we warrant that the information supplied herein is correct, the application was completed in full at the time of signature thereof, that I/we am/are duly authorised to conclude this agreement, that I/we understand the full effect and meaning thereof and that, if this agreement is concluded on behalf of a business or a juristic person, I/we warrant that the business is trading in solvent circumstances.

I/we hereby indemnify and hold harmless the municipality, its principals, agents, contractors and successors in title against all claims, demands, damages, expenses and legal costs, however caused, arising from the supply, interruption or fluctuation of any services.

I/We hereby choose the street address/stand number specified above as domicilium citandi et executandi where I will accept any notices and legal processes to be served.

I/We received a duplicate of this application form and am/are aware of the applicable further conditions of supply set out in the annexure at the back of this form.

.....
CUSTOMER/APPLICANT

Name in print:

.....
ON BEHALF OF MUNICIPALITY

Name in print:

An Owner may be notified if the consumer's account reflects an outstanding balance. The Owner will be liable for all amounts owing in terms all services rendered.

Should a person sign this contract in a representative capacity, such person warrants his/her authority to represent the Applicant. In the event of the Applicant being found for any reason not to be bound by this contract, the signing person accepts responsibility for the performance of all terms and conditions of this agreement and/or Electricity/Gas/Water Bylaws.

The Applicant warrants that in the case of change of ownership of the property an electrical compliance certificate has been obtained.

The Applicant hereby consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act (Act No. 32 of 1944) as amended, in respect of any action which the Council may institute against him/her arising out of this Agreement: Provided that the Council shall, notwithstanding the above, have the right to proceed with any such action in any competent Court of Law.

This application shall be deemed to be accepted by the Council and a Consumer Agreement between the parties valid from the dates of signature thereof or the date of occupation of the property by the applicant whichever is the earlier, upon the lapse of 30 (thirty) days from the date of receipt of this application by the Council, provided the application is not rejected by the Council within that period.

Reconnection fees and additional deposit and full payment of the outstanding account (including rates) are payable before services are reconnected.

Free and undivided access to meters must be available at all reasonable times. If access is not available/denied, services may be discontinued after notification.

All meters remain the property of this Council even though breakage, new installation or repairs are not the applicant's account. Any tampering or bridging out of meters are a criminal offence and will be fined.

AFFIDAVIT:

I, the undersigned:

hereby declare under oath as follows:

I am an adult male/female residing at _____

My current postal address is _____

I am duly authorised to make this affidavit and the contents hereof fall within my personal knowledge and are true and correct.

DEPONENT

I certify that before administering the oath, I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(a) Do you know and understand the contents of this declaration? _____

(b) Do you have any objection to taking the prescribed oath? _____

(c) Do you consider the prescribed oath to be binding on your conscience? _____

I certify that the deponent has acknowledged that he/she knows and understands the contents of the declaration, which was sworn before me, and the deponent's signature was placed thereon in my presence.

SIGNED AT _____ on this _____ day of _____

COMMISSIONER OF OATHS

NOTICE OF DEMAND

XYZ MUNICIPALITY REVENUE MANAGEMENT

Tel No.

Address

Fax

Date

Dear Sir / Madam

ACCOUNT:

ARREAR RATES AND SERVICES CHARGES:

ROUTE:

SUPPLY ADDRESS:

ARREAR RATES AND SERVICE CHARGES

Your attention is drawn to the fact that the above account reflects an overdue amount of **(Rand)**.

In terms of Section 11 of the Electricity Act, No. 41 of 1987 and Section 30 of the Water Supply by-law, we hereby give you notice that should payment of the above charges not be received by the Council within **14 (fourteen) days** of receipt hereof, the electricity and water supply to you will be discontinued without any further notice.

INFORMATIVE NOTE:

Should you subsequently have paid the account in full or arranged to pay the arrear amount off over a period of time, you are kindly requested to confirm such payment(s) or arrangements at the number printed above.

However, should you require an arrangement facility, please call at your nearest credit control office within **14 (fourteen) days** of the receipt of this notice. Please also note that all costs relating to the disconnection and reconnection of services, as well as any costs incurred in litigation, for the recovery of the arrears, will be recovered from yourself.

Interrupted services will only be reconnected following the payment of the applicable reconnection fee, necessary deposit increase and full arrear amounts or once an appropriate arrangement for settlement of your account has been made.

The penalty fee will be debited on the next account.

PLEASE REGARD THIS AS A FINAL NOTICE

Yours faithfully

CHIEF FINANCIAL OFFICER

Where the payment is made at a Treasury Pay Point (listed below), this advice must be presented to the Enquiry Counter after payment to ensure restoration of supply.

If you make payment to an agent (i.e. Post Office, Pick 'n Pay or any other financial institutions), please ensure that proof of payment together with this advice is faxed to **(Fax number)** to ensure that services are restored. Restoration of services will only commence after 15:30 on working days.

Should you not respond to this advice, legal action will be instituted to recover the overdue amount.

CHIEF FINANCIAL OFFICER

DRAFT