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**Research Title: Professionalising Local Government:  
The implementation of the National Treasury:  
Municipal Regulations on Minimum  
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## KEYWORDS

- Professionalization
- Minimum-Competency
- Non-Compliance
- Service Delivery
- Policy intervention
- Case-study
- Skills
- Monitoring
- Planning
- Analysis



## DECLARATION

I, Larry Samuel Steyn, hereby declare that **Professionalising Local Government: The implementation of the National Treasury: Municipal Regulations on Minimum Competency Levels** is my original work. It has never been presented to any other University or Institution. Where other people's works have been used herein, references have been duly provided, and in some cases, quotations made. This dissertation is, therefore, submitted in partial fulfilment of the requirements of the MPhil Degree in Local Government and Decentralization, University of the Western Cape.

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Date:

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## DEDICATION

This dissertation is dedicated to my late father, Dennis Steyn, my mother, Lucy Steyn, my wife Vivienne and two daughters, Toby and Christen for their encouragement. It is my sincere wish that this work will encourage my daughters to aim for greater heights.

**Larry Samuel Steyn**

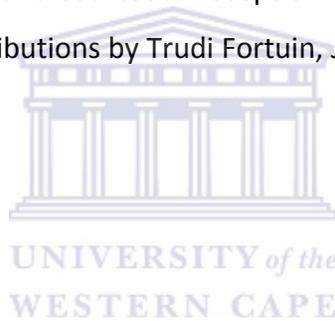


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I am greatly indebted to Professor Nico Steytler for his leadership and guidance. He unselfishly devoted much of his time in commenting on my work and helped to unlock some creative thinking that I did not believe I had. This work would not have reached the state of completion without his guidance.

My special thanks also go out to all the officials at municipal and provincial level that took the time to discuss the topic and to complete the questionnaire. It is my sincere belief that through their contribution we can help to positively shape the direction that local government takes.

I further acknowledge the selfless and courteous reception that I received from the staff at the Community Law Centre. The contributions by Trudi Fortuin, Jill Claassen and Debbie Gordon are much appreciated.



## ACRONYMS

COGTA	Department of Co-operative Governance and Traditional Affairs
DPLG	Department of Provincial and Local Government
IMFO	Institute of Municipal Finance Officers
MAA	Municipal Accountants Act 21 of 1988
MAB	Municipal Accountants Board
MDB	Municipal Demarcation Board
MEC	Member of the Executive Committee
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MINMEC	Ministers and Members of the Executive Council
NQF	National Qualifications Framework
SCM	Supply Chain Management
SMC	Special Merit Cases
SMCR	State of Municipal Capacity assessment Report

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# Chapter 1: Introduction

## 1.1 *Problem statement*

This study discusses the professionalization of local government, with special emphasis on the extent to which municipalities complied in implementing the National Treasury's Municipal Regulations on Minimum Competency Levels.<sup>1</sup> The study further illustrates how the repeal of legislation, like the erstwhile Profession of Town Clerks Act 75 of 1988,<sup>2</sup> and the Municipal Accountants Act 21 of 1988<sup>3</sup> eroded the legislative requirement for adequate skills and experience for accounting officers, chief financial officers and other senior financial managers. The absence of this legislation had dire consequences, as unskilled persons filled these important posts.

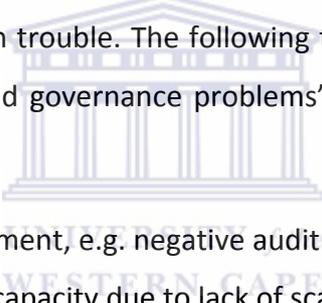
When National Treasury realized the significance of the skills gap at senior management level in local government, they stepped in by promulgating the Minimum Competency Level Regulations in June 2007.<sup>4</sup> In terms of regulation 18 the continued employment of financial officials (and supply chain management officials) appointed after 01 July 2007 is subject to them obtaining the required higher education qualification, work-related experience and the required minimum competency level in financial and supply chain management on or before 01 January 2013. The regulations were designed to provide municipalities with sufficient time to address skills gaps and ensure compliance without interrupting day-to-day operations before the due date.

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- 1 Local Government: Municipal Finance Management Act: Municipal Regulations on Minimum Competency Levels GN R493 in GG 29967 of 2007 (Competency Regulations).
  - 2 Profession of Town Clerks Act 75 of 1988 (Prior to repeal by Act 62 of 1996).
  - 3 Municipal Accountants Act 21 of 1988 (Prior to repeal by GN 638/GG 27748/306-06-2005).
  - 4 National Treasury MFMA Circular No. 60: Municipal Finance Management Act No. 56 of 2003, 1.

It is unlikely that the compliance date of 1 January 2013 will be met by all municipalities and this means municipalities will be guilty of non-compliance with the legislation. Regulation 15 and 18 will therefore become immediately applicable. The risk of continued employability of certain officials will become a reality. The only remaining alternative for non-compliant municipalities is to apply to National Treasury as a 'Special Merit Case' which could effectively delay enforcement for certain qualifying officials for up to eighteen months, to 1 July 2014.<sup>5</sup>

At the Minister of Finance and Members of the Executive Council (MINMEC) meeting of December 2011, it was re-affirmed that these regulations are targeted at improved service delivery.<sup>6</sup>

The Department of Cooperative Governance and Traditional Affairs' (COGTA) report, entitled *State of Local Government Assessment Report*,<sup>7</sup> brought out in 2009, was a clear sign that local government was in trouble. The following two aspects form part of some of the 'stubborn service delivery and governance problems' identified for causing distress in local government:

- 
- Poor financial management, e.g. negative audit opinions; and
  - Insufficient municipal capacity due to lack of scarce skills.

The annual performance audit reports released by the office of the Auditor-General bear testimony to the above, revealing that most municipalities were issued with audit reports reflecting adverse audit opinions. The most significant non-compliance issues relate to the contravention of Supply Chain Management (SCM) Regulations.<sup>8</sup>

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5 National Treasury MFMA Circular No. 60: Municipal Finance Management Act No. 56 of 2003, 4.

6 National Treasury MFMA Circular No. 60: Municipal Finance Management Act No. 56 of 2003, 1.

7 State of Local Government in S.A.: Overview Report, National State of Local Government Assessments, 2009

8 Auditor-General: General Report on the audit outcomes of Gauteng Local Governments: 2009-2010, at [<http://agsa.co.za/Reports>]

## **1.2 Research question**

The primary question in the research is whether the National Treasury's policy initiative has been successful in achieving full compliance with the Competency Regulations at the due date set at 1 January 2013? If not, what are the reasons for not meeting the target date? These questions will be answered in the context of the experience at a selected mid-sized municipality in Gauteng. This case study will assist us in responding to the following questions:-

One therefore has to determine if the compliance requirements were perhaps not too stringent? Should National Treasury not have factored-in the capacity challenges at municipal level, when planning for the implementation thereof? Alternatively, were municipalities not adequately subsidized and supported to meet the set compliance criteria?

The second question therefore is what were the reasons for this partial failure? In this regard one needs to determine what the contributions of the various role players were. These players include National Treasury, Provincial Treasury, the municipality (administration and council) and the market of skilled personnel.

## **1.3 Significance of the research**

This study researches the impact of a major policy intervention by National Treasury to improve service delivery. In the light of indications that not all municipalities will comply by meeting the required standards for senior management, this research will pinpoint reasons for the failure of a major policy intervention.

## **1.4 Argument**

When organs of state like National Treasury undertake policy interventions in order to enhance service delivery, it is always difficult to know the success or failure of such an intervention. However, in relation to the competency regulations, indications are that there is going to be a partial failure, in that all municipalities will not fully comply in meeting the 01 January 2013 deadline.

The case study reveals that the failure by some municipalities to successfully comply with the implementation of National Treasury Minimum Competency Regulations (in meeting the set deadlines) can be ascribed to a combination of three of the following factors:

- National Treasury, when implementing the policy initiatives, did not factor in the impact that the lack of professionalism and related capacity problems prevalent at local government level would have;
- The market has not produced enough local government professionals with the required qualifications, skills and experience as expected, which influences the extent of compliance;
- It is not only one but a combination of the above factors that will contribute to the envisaged failure of this policy intervention.

It will be further argued that having the legislative and policy framework in place is just one side of the coin. The reverse side of the coin, when implementing policy initiatives, is the promotion of greater professionalism coupled with well-targeted support.

## 1.5 Literature Survey

There is some literature available on why policy initiatives fail.<sup>9</sup> This material mostly demonstrates the influence that a *lack of political will* has on policy implementation. Further to the aforesaid the existing material also aptly display how factors like a *lack of resources*, *resistance by implementees* and also how a *hostile social or economic environment* impacts on the failure of policy initiatives. The latter occurs when managers play an increasingly *political* role in professional local government in response to the abdication or ineptness of political leadership by elected leaders.<sup>10</sup>

There is some literature on the legal rules relating to the Competency Regulations; see for example the discussion by Steytler and De Visser in this regard.<sup>11</sup> There has, however, no assessment been done on how the Competency Regulations are implemented. This study will add to the knowledge, in that it will illustrate the reasons and success or failure of a policy initiative, and further make recommendations that may contribute to better planning for policy implementation.



## 1.6 Methodology

This study will firstly rely on the *Legal Instruments* relevant to professionalization of accounting officers and chief financial officers. These laws and regulations will be scrutinized. To access the actual dynamics of implementation, a case study is used. Therefore, the materials to be used in the study will mostly be primary materials. These materials include notices, letters, records, reports etc. Further, structured interviews were held with senior management in the selected municipality as well as in the Provincial Treasury.

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9 UNECO Report "Institutional effectiveness and accountability of the executive" 2005  
<http://www.uneco.org/aqri2005/chap5>, 137.

10 Nalbandian, J (1987) *The Evolution of Local Governance: A New Democracy*, 2.

11 Steytler, N & De Visser, J (2007) *Local Government Law of South Africa* 11- 14.

## **1.7 Chapter outline**

Chapter 2 gives a historical review of how the skills requirements in local government are regulated. The chapter further explores the government strategies to improve skills, whereafter the competency framework currently in place is unpacked, with the focus on the Competency Regulations.

In chapter 3 a case study conducted in a mid-sized municipality is presented to determine the extent of compliance by the municipality. After giving a description of the municipality, the chronological rollout of the Regulations over the 5 year implementation period is given. This chapter also provides an analysis of the research data showing any shortcomings in the manner in which the initiative was approached by the National Treasury, the Provincial Treasury, the municipality and the influence of the market.

Chapter 4 is a summary of the conclusions drawn and the related implications. The chapter concludes with recommendations on improving policy implementation at local government level.



## **Chapter 2: The historical context and current regulation of skills requirements in municipalities**

### **2.1 Introduction**

The aim of this chapter is to give a historical context within which the skills requirement in local government is regulated. The discussion starts by giving context to how the skills requirement for senior financial managers was regulated before 2004. The discussion then traces the introduction of a new regime of qualification requirements by the Department of Provincial and Local Government (DPLG), called the *Performance Regulations*, in 2006, followed by the National Treasury's Competency Regulations in 2007 and the Department of Cooperative Government's (COGTA) amendment to the Systems Act in 2010. The dynamics of how these interventions were to fill a void created by the repeal of the Profession of Town Clerks Act 75 of 1988 and the Municipal Accountants Act 21 of 1988 is explored in the paragraphs that follow.

### **2.2 The regulation of financial skills before the enactment of the Municipal Finance Management Act 56 of 2003**

Before 1928 there was no distinctive qualifications needed for a career in local government financial management. Qualification requirements for local government finance officials were only formulated by the Institute of Municipal Finance Officers (IMFO) in 1928.<sup>12</sup> The curriculum and syllabus drafted then had in mind to create well qualified chief financial officers in the fields of technical accounting, public finance, auditing, economics, statistics, commerce and law.

In the early eighties IMFO's curriculum changed and included degrees from recognized institutions of higher learning. The latter had to include studies in Accounting I and II, Economics I and Commercial Law I. This was complemented by the study at UNISA of

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<sup>12</sup> De Lange, D J (2009): Paper delivered at the IMFO Conference: IMFO membership qualification requirements, 1.

Accounting III (Local Government focus) and also by writing an admissions examination at IMFO.<sup>13</sup>

In 1988, with the enactment of the Municipal Accountants Act 21 of 1988, no municipality was allowed to appoint a person to perform any municipal accountants function unless such a person was registered with the Municipal Accountants Board (MAB). The MAB further required practical training at municipal level which training was facilitated under the stewardship of IMFO.

Almost similar to the Municipal Accountants Act 21 of 1988, the Profession of Town Clerks Act 75 Of 1988, made provision for the establishment of a Town Clerks Council; for the registration of professional town clerks, registered town clerks and prospective town clerks. This statutory Council served as a guardian of professionalism and ethics serving local governments. In this regard an Education Advisory Committee for town clerks ensured that town clerks and aspiring town clerks conformed to the relevant educational and skills requirements. Further to the aforesaid, a working knowledge of local government finance formed an integral part of the curriculum of members.

The Town Clerks Act was repealed by Act 62 Of 1996. The White Paper on Local Government of 1998 led to the enactment of a new suite of local government legislation since 1998. The focus of the new legislation was on development and reform at the time. This inadvertently placed the professional aspect of senior local government officials on the back burner.

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13 De Lange D J (2009) 2.

### **2.3 The regulation of financial skills after the enactment of the Municipal Finance Management Act 56 of 2003**

With the enactment of the MFMA in 2003, and the repeal of the Municipal Accountants Act in 2005, the qualification requirements of senior finance managers in local government was left without a regulatory body to oversee the quality of appointments. The repeal of the Town Clerks Act and the MAA therefore created a void. When appointments were made in terms of the new legislation, little regard was given to the valuable skills and institutional memory that were lost as a result of appointing inadequately trained people.<sup>14</sup> This, in turn, led to unprofessional conduct by senior management and a general inability to deliver services to the required standards. The Department of Provincial and Local Government (DPLG) introduced its Performance Regulations in 2007<sup>15</sup> whilst the National Treasury responded by promulgating the Competency Regulations in 2007.<sup>16</sup> The most recent intervention was introduced by the Department of Cooperative Government and Traditional Affairs (COGTA) in 2011.<sup>17</sup>

In practical terms, these inappropriate appointments in local government caused distress in the system. This led COGTA to produce a *State of Local Government Assessment Report*<sup>18</sup> in 2009. This assessment led to the decision to develop and implement a *National Turn-Around Strategy for Local Government*.

Firstly, this strategy was targeted at addressing the lack of capacity and required skills to manage local government in order for it to fulfil its core mandate. It found a competency and skills vacuum, which is prevalent on senior management level. In this context,

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14 Atkinson, D (2007) 'Taking to the Streets: Has the Developmental Local Government failed in South Africa?' In Buhlungu, S, Daniel, J, Southall, R, & Lutchman, J, (eds.) *State of the Nation: South Africa, Cape Town*, 61

15 Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly accountable to Municipal Managers, 2006 GN R805, *Government Gazette 29089* (Performance Regulations).

16 2007, GN R493, *Government Gazette 29967* (hereafter Competency Regulations).

17 Local Government: Municipal Systems Amendment Act 7 of 2011.

18 State of Local Government in S.A.: Overview Report, National State of Local Government Assessments, 2009.

the argument that the (elusive) search for a developmental state may well mean that effective management comes at the expense of better (responsive) governance.<sup>19</sup>

The performance reports on municipalities published by the office of the Auditor-General in 2009 corroborated the fact that the turnaround strategy should, among others, focus on competency requirements of senior municipal officials. These reports bear testimony to the fact that most municipalities struggle to perform financially well, in that negative audit opinions are mostly given during the annual audits. Supply chain management in municipalities, is for instance, one of the most problematic areas that is highlighted in these audits.<sup>20</sup>

Local government, plagued by capacity constraints, witnessed the then DPLG responding in 2006 by introducing the Performance Regulations in an attempt to professionalize senior management in the field. These regulations contain a framework for competency requirements and job descriptions in the posts of the municipal managers and managers reporting directly to them. This category of managers now has to be employed on contractual basis and had to be measured in terms of performance agreements. Therefore, the focus of these regulations was placed on outcomes. It also spells out the higher qualification requirements, work related experience and core managerial and occupational competencies. The Performance Management Regulations rely largely on a municipality's internal performance management system to enforce its competence regime, coupled to some measure of external reporting.

The Performance Management Regulations are viewed to be reliant on the courts for the enforcement of sanctions. Recent jurisprudence in the Western Cape supports this view. In *Paulse vs Oudtshoorn Local Municipality and others*<sup>21</sup> the Court had to review the appointment of a municipal manager against section 54A of the amended Systems Act which provides that the appointment of a senior manager is null and void if the incumbent

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19 Atkinson (2007), 63.

20 Auditor-General: General Report on the audit outcomes of Gauteng Local Governments: 2009-2010, at [<http://agsa.co.za/Reports>].

21 *Paulse vs Oudtshoorn Local Municipality and others*, case no. 25790/2011 (WC).

does not have the required skills, expertise, competencies or qualifications. In terms of the amended Systems Act municipal managers are required to have the skills, experience and qualifications as prescribed in the Local Government: Municipal Performance Regulations. The Court therefore nullified the decision to appoint a candidate that did not conform to the competency framework. Municipalities attempting to make irregular appointments can brace themselves to see the reversal of such appointments.

National Treasury intervened in 2007 by introducing the Competency Regulations. These regulations are aimed at setting minimum competency levels as a requirement to accounting officers, senior financial managers and supply chain officials. It therefore goes further than the Performance Regulations in that it includes middle management and supply chain officials and not only the accounting officer and the managers that report to him or her. A distinction is further made between the competency requirements of high and low capacity municipalities. This forces senior managers in high capacity municipalities to have an honours degree in a relevant field, and the chief financial officer to be at the level of a chartered accountant.<sup>22</sup>

COGTA made the most recent intervention in 2011 by the enactment of the Systems Amendment Act of 2011.<sup>23</sup> It provide for a competency framework for the appointment of municipal managers and managers directly accountable to municipal managers.<sup>24</sup> Any appointment in contravention of the competency framework can be declared null and void, wherein the MEC for local government must, within 14 days of receiving information to that effect, take appropriate steps including obtaining a declaratory order on the validity of such an appointment.<sup>25</sup>

There are a lot of similarities in the three interventions described above. They are all targeted at the same client and meant to address the same mischief.<sup>26</sup> For the purposes of

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22 Ntliziywana, P (2010) *'Profesionalization of local government: A critical examination of the competency framework for municipal officials'* Presentation to the Institute of Local Government Management: Rustenburg, 6.  
23 Municipal Systems Amendment Act 7 of 2011.  
24 Ss 54A and 56 Systems Amendment Act.  
25 S 54A(8) Systems Amendment Act.  
26 Ntliziywana (2010) 11.

this research the Minimum Competency Levels Regulations of 2007 forms the basis of the research as the final and full implementation is due at the end of 2012.

## **2.4 Municipal Regulations on Minimum Competency Levels**

The National Treasury's point of departure is that a firm foundation of financial management systems and capacity is fundamental to the successful implementation of infrastructure programmes, service delivery expansion programmes, improvements in the level of reliability and frequency of services in municipalities. It is therefore absolutely critical that the correct skills, mind-set and expertise are located at the right places within the municipality.<sup>27</sup>

### **2.4.1 The requirement of the competency levels**

The Competency Regulations requires an accounting officer, chief financial officer, senior management and other financial officers to have the skills, experience and capacity to fulfil the responsibilities commensurate to their job requirements.<sup>28</sup> Failing to comply will constitute financial misconduct.<sup>29</sup> The minimum competency levels in terms of *higher qualifications, work related experience, core managerial and occupational competencies* and the required *financial and supply chain management competency areas* are set-out in the regulations, for the same categories of municipal officials.<sup>30</sup>

The minimum competency levels as required in terms of the regulations are depicted in Table 1. Table 1 clearly depicts the different categories of officials, and the minimum competencies required for the different responsibilities. A further differentiation is made in terms of higher education qualifications for officials in municipalities with budgets of up to a maximum of R500 million and with budgets above R500 million.

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27 National Treasury (2011) 2011 Local Government Budgets and Expenditure Review: 2006/07 – 2012/13, available at <http://www.treasury.gov.za/>.

28 Reg 2(1), 4(1), 6(1), 8(1) and 10(1) Competency Regulations.

29 Reg 2(3), 4(3), 6(3), 8(3) and 10(3) Competency Regulations.

30 Reg 3, 5, 7, 9 and 11 Competency Regulations.

**Table 1: Competency requirements**

MINIMUM COMPETENCY LEVELS							
	Description	Higher Education Qualification		Work-Related Experience	Core Managerial & Occupational Competencies	Financial & SCM Competency Areas	Competency Areas
		<R500mil	>R500mil				
1	Accounting Officers	NQF level 6 or Cert. in Municipal Financial Management		Min. of 5yrs Senior management level	As described in Performance Regulations	The 9 required minimum unit standards per Regulation 3	N/A
2	Chief Financial Officers	NQF level 6 or Cert. Fin. Man	NQF level 7 or Chartered Accountant	Min. of 5/7 yrs Middle management level	As described in Performance Regulations	The 11 required minimum unit standards per Regulation 5	N/A
3	Senior Managers	NQF level 6 or Cert. Fin. Man	NQF level 7 in relevant field	Min. of 5/7 yrs Middle management Level	As described in Performance Regulations	The 9 required minimum unit standards per Regulation 7	N/A
4	Other Financial Officials	NQF level 5 (Acc. Fin. Econ.) or Nat. Dipl.	NQF level 5 (Acc. Fin. Econ.) or Nat. Dipl.	Min. of 4-6yrs or 5-7yrs Middle management Level	N/A	N/A	The 8 required minimum unit standards per Regulation 9
5	Supply Chain Management Officials	NQF level 5 or Nat. Dipl.	NQF level 6 or Cert. Mun. Finance	Min. of 4-6yrs or 5-7yrs Middle management Level	N/A	N/A	The 8 required minimum unit standards per Regulation 11
6	Supply Chain Management Managers	NQF level 5 (Acc. Fin. Econ.) or Nat. Dipl.	NQF level 5 (Acc. Fin. Econ.) or Nat. Dipl.	2 Years' experience	N/A	N/A	The 6 required minimum unit standards per Regulation 12

With effect of 01 July 2007, the first task of a municipal manager was to assess the competencies of the chief financial officer, senior management, and other finance officials and supply chain management officials for compliance in terms of the municipal regulations on minimum competency levels. In order to address identified gaps, a process of regular monitoring and continued support should have been put in place.

#### **2.4.2 Implementation rollout of the Competency Regulations**

The continued employment of the different categories of officials outlined in the Regulations is not affected if they were employed when the Regulations became effective on 01 July 2007. These categories of officials are, however, required to attain the required minimum competency levels on or before 01 January 2013.<sup>31</sup> All financial officials and supply chain management officials should have attained the minimum competency levels included as performance targets in their performance agreements in order to assist them to clear the bar before the due date.<sup>32</sup> A similar requirement is set for the municipal managers, chief financial officers and senior managers.<sup>33</sup> For the latter categories of officials this performance target is to be included under the *'financial management core managerial and occupational competencies'* in regulation 26(8) of the Performance Regulations carrying a 30% weighting of the total score.<sup>34</sup>

The affected municipality is obliged to assist applicable officials who on 01 July 2007 were employed and did not meet the competency levels, in attaining these requirements within the specified time frames. Failure to achieve the targeted outcomes will affect continued employment, or continuation in the applicable position.<sup>35</sup> For the category of employees where performance agreements are applicable, the failure to comply in time may result in regulation 32(3)(b) of the Performance Regulations<sup>36</sup> becoming effective, in that it provides that steps to terminate the contract of employment on the grounds of unfitness or incapacity to be instituted.

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- 31 Reg 15 Competency Regulations.  
32 Reg 16 (1) Competency Regulations.  
33 Reg 16 (2) Competency Regulations.  
34 Reg 16 (3) (a) and (b) Competency Regulations.  
35 Steytler & De Visser(2007) 11- 15.  
36 Municipal Performance Regulations, 2006.

The Competency Regulations allow for the appointment of persons not meeting the requirements, after 01 July 2007. However, this appointment is conditional in that such an appointee attaining the required higher education qualification and minimum competency levels as specified in the competency regulations on or before 01 January 2013.<sup>37</sup> It therefore implies that the conditional employment will terminate by the force of law should the employee fail to meet the requirements by 31 December 2012.<sup>38</sup> The latter therefore implies that all serving municipal managers, chief financial officers and senior managers employed in terms of 5 year performance contracts may fall within this category by the operation of the law.

With effect from 01 January 2013, the absolute enforceability of the competency regulations becomes effective.<sup>39</sup> From that date the employment of a person not qualifying in terms of the Competency Regulations, would be unlawful and invalid.<sup>40</sup> Regulation 18 of the Competency Regulations need to be read with sections 186 and 187 of the Labour Relations Act 66 of 1995. These two sections describe the meaning of dismissals and what constitutes automatically unfair dismissals. An employer therefore may only terminate a fixed-term contract of an employee, during the subsistence thereof, if good cause for so doing can be shown. If the employer fails to do so, the termination will be regarded as unfair dismissal. Good cause in this instance may mean that a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job and the application of the law.<sup>42</sup>

#### ***2.4.3 Reporting duties of municipalities in terms of the regulations on minimum competency levels***

The Competency Regulations place a monitoring and reporting duty on the municipal manager of a municipality. The municipality must compile two reports per year on the

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37 Reg 18 (2) Competency Regulations.

38 Steytler & De Visser (2007) 11 – 15.

39 Reg 18 (1) Competency Regulations.

40 Steytler & De Visser (2007) 11 – 16.

41 Ss 186 and 187 Labour Relations Act 66 of 1995.

42 S 187(2)(a) Labour Relations Act.

extent of compliance with the minimum competency levels. These reports are required to be submitted to National Treasury and to provincial treasury by 30 January and 30 July of each year until 30 July 2015.<sup>43</sup> The annual report of a municipality, at the end of the financial year, should also reflect the extent of compliance.<sup>44</sup>

The report submitted in terms of regulation 14 (2)(a) must include:<sup>45</sup>

- (a) the total number of financial officials and supply chain management officials employed and the number whose competency assessments have been completed;
- (b) the total number of officials who meet the prescribed competency levels; and
- (c) for those who do not meet the levels, the total number of officials whose performance agreements include the attainment of qualifications as performance targets.

## **2.5 Conclusion**

In the preceding sections an illustration was given of the management of finances at local government level before the introduction of the new era of local government legislation starting in 1998. The focus on the developmental aspect of local government legislation, led amongst others to the repeal of legislation on the professional conduct of local government practitioners. This in turn created a void which in effect allowed the appointment of poorly skilled and qualified officials. In response initiatives to improve the professionalization of officials were introduced, whereupon the focus in this chapter was placed on National Treasury's Regulations on Minimum Competency Levels of 2007. In the next chapter a case study is used to determine the extent to which the applicable role players comply with the implementation of these Regulations.

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43 Reg 14 (2)(a) Competency Regulations.

44 Reg 14 (2)(b) Competency Regulations.

45 Steytler & De Visser (2007) 11 – 16.

## **Chapter 3: Implementing the regulations in a selected mid-sized municipality**

### **3.1 Introduction**

This chapter is based on a case study conducted to determine the extent of compliance at a mid-sized municipality in Gauteng. After giving a description of the municipality, the chronological rollout of the regulations over the five year implementation period is given. The state of compliance of the municipality as in October 2012 is given where after the contributing roles of all actors in National Treasury's initiative are assessed, with special emphasis on the areas where there has been a lack of compliance with the Municipal Regulations on Minimum Competency Levels.

### **3.2 Background of the municipality**

The municipality is a category B municipality and forms part of a district municipality, along with 3 other category B municipalities. The municipality operates within a mayoral executive system<sup>46</sup> with 22 wards, and therefore has 44 councillors. The administrative wing of the municipality is responsible for the implementation of corporate governance.

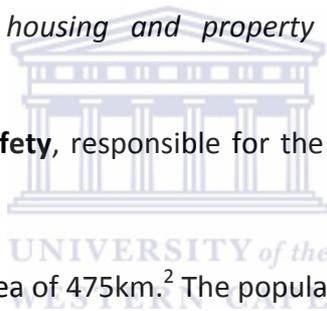
The municipal manager plays a pivotal role in managing the interface between political office bearers and the municipal administration. The municipal manager is therefore the custodian of all records and documents and as accounting officer takes overall responsibility for the municipality's financial affairs. In order to be able to give fruition to the requirement to run an efficient, economical and accountable administration, the operations of the municipality is divided into the following six directorates:<sup>47</sup>

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44 A mayoral executive system as described in section 9(d) of the Structures Act 117 of 1998.

45 The Annual Report of the municipality: 2011 – 2012, 25.

- The **directorate finance**, responsible for the line functions: *financial planning and treasury; supply chain management; expenditure control; credit control and debtors and revenue control*;
- The **directorate corporate support services**: responsible for the line functions, *information and communication technology; administrative services; legal services and human resources*;
- The **directorate infrastructure**, responsible for the line functions: *electrical services; roads and storm water; water and sanitation; landfill and waste and parks and cemeteries*;
- The **directorate social services**, responsible for the line functions: *health services; and social and community services*;
- The **directorate development planning**, responsible for the line functions: *local economic development; housing and property administration; valuations; and building control*; and
- The **directorate public safety**, responsible for the line functions: *licensing; and law enforcement*.



The municipality comprises an area of 475km.<sup>2</sup> The population of the municipality is 140 000 residents, with 32 000 households supplied with municipal services.<sup>48</sup> For the 2012/2013 financial year the municipal council approved an operations budget of over R850 million.<sup>49</sup> The staff establishment of the municipality provides for 850 permanent positions of which 196 are currently vacant. It is thus a large municipality with a significant number of residents and a large budget for the delivery of services and personnel costs. It is also significant to note that in 2010 the National Treasury categorized the municipality as a high capacity municipality, meaning that less assistance from Treasury was required, and therefore that the assumption was made that the municipality's finances were fairly well managed.

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48 The Integrated Development Plan of the municipality: 2012 -2013, 7.

49 A resolution of the municipal council approving their budget for the 2012/2013 financial year.

Lastly, during the 2009/2010 financial year the office of the Auditor-General gave the municipality an unqualified audit opinion on its financial statements. Unfortunately during the 2010/2011 financial year the opinion on the financial statements regressed to a qualified audit opinion.<sup>50</sup>

### **3.3 Methodology**

The methodology applied in this study is to establish the causal relationship between identified constructs. In this instance what are the reasons why a municipality is not fully complying in implementing the Competency Regulations timeously. Consideration was therefore also given to the impact of non-compliance to the Regulations.

The research was started by doing a documentary survey of documents at the municipality. A search at the records section of the municipality was done of any incoming and outgoing correspondence related to the Competency Regulations. This served as a useful tool in order to determine the level of cooperation between the municipality and the Treasury. A survey was also done of documents at Provincial Treasury wherein data could be obtained about the interaction between the municipality and Treasury on the Competency Regulations.

A sample of 18 officials were targeted at the municipality and subjected to a structured interview. This sampling included senior managers, the chief financial officer, middle management in finance and the supply chain management officials. The group in the sample was given questionnaires which were completed during an interview in which the purpose and application of the questionnaire were explained to them. Two of the selected officials in the sampling could not respond because they have resigned from the municipality. The sample also included interviews with two senior managers at Provincial Treasury. These were managers working in the MFMA compliance unit at Provincial Treasury.

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50 Auditor General Report on Audit Outcomes: 2009/2010 and 2010/2011, held during a briefing of Mayors in Gauteng on 16 March 2012 at the offices of the Department of Local Government and Housing in Gauteng.

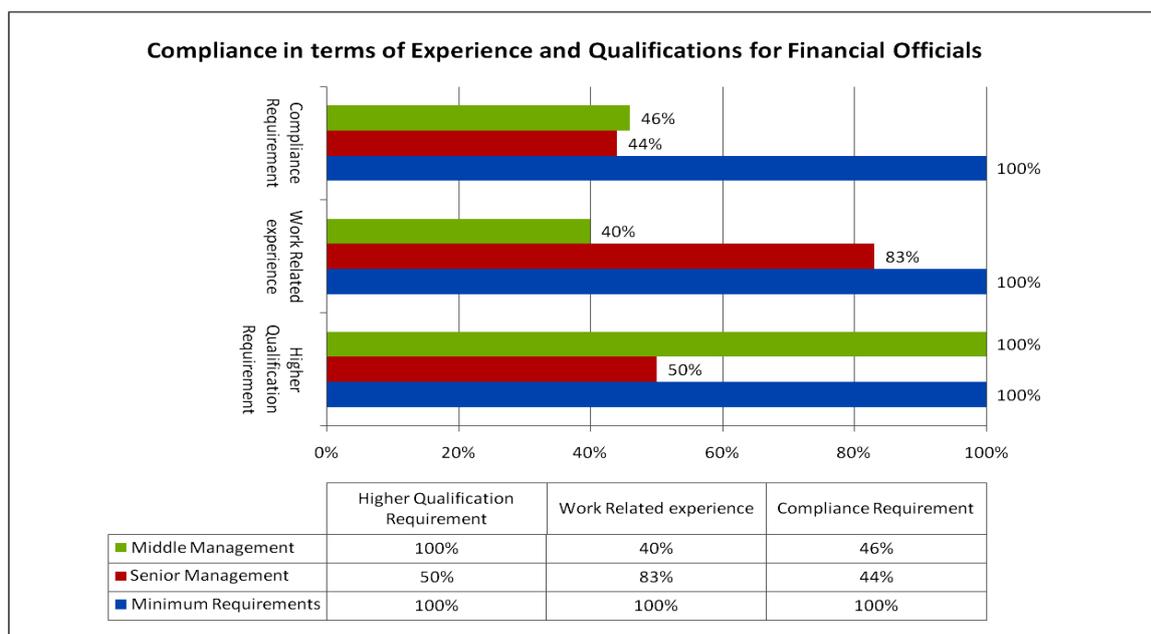
The experience level of participants is important in that the assumption is made that more experienced participants are able to give clearer responses. The officials at Provincial Treasury were senior mature administrators who would have a deep understanding of local government. The latter's responses are invaluable because it serve to validate responses given by municipal management. This ability to counter-check gives more credibility to the research results. An interpretive view is given of the documentary data obtained from the municipality and provincial treasury, combined with the responses received on the questionnaires.

### **3.4 Working towards implementing the Regulations**

Regulation 13 places a duty on the municipal manager to ensure that all financial officials and supply chain management officials are assessed in order to determine gaps in relation to their minimum competency levels. After the assessment, the municipality is required to assist officials who are not complying, over a 5 year rollout period, to reach the required competency levels. In order to determine compliance to this regulation, an analysis of the status of compliance of the municipality as in October 2012 was done.

The responses of senior and middle managers to two of the four criteria tested for compliance purposes, namely '*higher education qualification*' and '*work-related experience*' are depicted in Figure 1. In the category senior managers, out of the six officials, only three (50%) comply in terms of higher qualifications while five out of the six (83%) comply in terms of work-related experience. The reason why all six of them do not qualify in terms of the higher qualifications requirement is because 3 senior managers need to improve their NQF qualification from NQF level 6 to NQF level 7. With regard to experience, five of the six senior managers have more than ten years work-related experience while one senior manager has less than five years' work related experience.

**Figure 1**



Secondly, in the category middle management, all ten officials (100%) of the respondents comply in terms of higher qualifications while only forty percent comply in terms of work-related experience. Out of the ten middle managers seven of them have less than five years work-related experience, with only one of them fully meeting the requirements in terms of the Competency Regulations. A more detailed analysis in terms of the four compliance criteria is applied to the target group hereunder:

**(a) The Municipal Manager**

The *municipal manager's* position became vacant on 31 July 2012. At the time, the incumbent fully complied in terms of the 'higher education qualification' in that the incumbent holds the qualification LLB, LLM (NQF level 8).<sup>51</sup>

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51 Report to National Treasury, dated 20 May 2012.

In terms of the second requirement, i.e. *'core managerial and occupational competencies'* the municipal manager was assessed in this respect during the 2009/2010 performance assessment. The assessment score was above average.

In terms of adhering to the third requirement, i.e. *'a minimum of 5 years' work-related experience'* the incumbent only had three years' experience as municipal manager and more than five years management experience at a previous employer. Therefore in terms of this requirement the incumbent complied.

The fourth requirement, i.e. *'financial and supply chain management requirements'* no record could be found that the incumbent conforms to any of the 11 identified competency areas.<sup>52</sup>

**(b) The Chief Financial Officer**

The **chief financial officer** holds the qualification B Comm. Accounting (NQF level 6). The municipality has a budget that exceeds R500 million and therefore the qualification should be improved to NQF level 7. The incumbent therefore does not fully comply in terms of the *'higher education qualification.'*<sup>53</sup>

In terms of the second requirement, i.e. *'core managerial and occupational competencies'* the incumbent was assessed during the performance assessment for the period 2009/2010, and scored above average in this category.

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52 Performance agreement (2011/2012): Municipal Manager.

53 Report to National Treasury, dated 14 August 2012.

In terms of adhering to the third requirement, i.e. '*a minimum of 7 years' work-related experience'* the incumbent exceeds in this requirement in that the incumbent has 11 years' experience as a chief financial officer at the municipality.<sup>54</sup>

In terms of the fourth requirement, i.e. '*financial and supply chain management requirements'* there is only proof that the incumbent qualifies for one (supply chain management) of the 11 identified competency areas.<sup>55</sup> The chief financial officer is currently enrolled for training at the DBSA in this regard. This training started in October 2012 and will be rolled out over a 10 month period wherein the incumbent will attend one week in every month.<sup>56</sup>

**(c) Supply chain management manager**

The **supply chain management manager's** position became vacant on 30 November 2011, and is not yet filled. At the time, the incumbent fully complied in terms of the '*higher education qualification'* in that the incumbent holds the qualification, National Diploma in Commercial Administration (NQF level 6).<sup>57</sup>

The supply chain management manager exceeded the '*minimum of 2 years' work-related experience'* required and at the time of resignation had 12 years' experience.<sup>58</sup>

In terms of complying with the *6 competency areas* in finances, it is not clear on which areas the incumbent conformed before leaving the municipality.

Three other officials at supply chain management were interviewed, i.e. the *supply chain management administrator; contracts manager and supply chain management officer*. All three of them comply in terms of the '*higher education qualification'* in that the incumbents

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54 Evidence from questionnaire no. 7: October 2012.

55 Evidence from questionnaire no. 7: October 2012.

56 Report to National Treasury, dated 14 August 2012.

57 Performance agreement (2011/2012): Chief Financial Officer.

58 Report to National Treasury, dated 20 May 2012.

all hold relevant National Diplomas (NQF level 5). They further comply in terms of the *'minimum of 2 years' work-related experience* as they all exceed this requirement. It is not clear to what extent they comply in terms of the *6 competency areas* in finances. Their responses during a structured interview, however, indicate that they had training in the supply chain management component.<sup>59</sup>

**(d) Other senior finance managers**

Seven senior finance officials at middle management level were assessed in the sample. They occupy the positions, *unit head finance; manager planning and budget control; asset manager; manager revenue; manager credit control and debtors; manager expenditure* and the *unit head assurance services*.

All seven of the middle managers in the finance department adhere to the *'higher education qualification'* requirement in that they either hold national diplomas or degrees in the finance regime.<sup>60</sup>

The *'work-related experience'* of all seven the middle managers exceeds 5 years. It can therefore be argued that they adhere to this requirement.

In terms of the third requirement, i.e. the *'8 identified financial competency areas'*, only one manager fully complies and the others are all currently enrolled to complete the remaining requirements and will fully comply by June 2013.<sup>61</sup>

**(e) Senior managers**

Three of the five remaining **senior managers** fully comply in terms of the *'higher education qualification'* in that the incumbents hold the degrees B. Admin Honns. (NQF level 7); Nursing ADM Honns. (NQF level 7); B Sc. MBA (NQF level 8); the diploma in traffic (NQF level 5) and the National diploma in real estate (NQF level 5).<sup>62</sup>

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59 During the structured interview (questionnaires 16, 17 and 18) respondents confirmed qualifications.

60 Report to National Treasury, dated 14 August 2012.

61 Report to National Treasury, dated 14 August 2012.

62 Report to National Treasury, dated 20 May 2012.

In terms of the second requirement, i.e. *'core managerial and occupational competencies'* four of the five managers were assessed in terms of this competency, during their 2009/2010 performance assessment.

In terms of adhering to the third requirement, i.e. *'a minimum of 7 years' work-related experience'* four of the five incumbents have adequate experience while one does not meet this requirement.

In terms of the fourth requirement, i.e. *'financial and supply chain management requirements'* there is proof that all five of the incumbents have been enrolled for training towards compliance at the DBSA. This course started in October 2012 and will continue for 10 months, during which incumbents will attend classes one week per month for the next 10 months.<sup>63</sup>

#### **3.4.1 Reporting on the status of compliance – half yearly reports since July 2007**

The municipal manager was required to report progress to National Treasury and Provincial Treasury on 30 January and 30 July of each year until 30 July 2015.<sup>64</sup> The state of compliance with the Competency Regulations was also to have been reported in the municipality's annual report.<sup>65</sup>

With regard to the submission of regular reports in terms of regulation 14(2), only two submissions were found in the municipal records.<sup>66</sup> This means that out of 11 reports that were due, evidence of only two are found. It therefore implies that the municipality treated this reporting duty in a very casual manner. Further the report dated May 2010 did not conform with the required format.

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63 Report to National Treasury, dated 14 August 2012.

64 Regulation 13 Minimum Competency Levels Regulations.

65 Regulation 14(2)(a) Minimum Competency Levels Regulations.

66 Regulation 14(2)(b) Minimum Competency Levels Regulations.

The lack of participation by municipal officials was evident in the responses by treasury officials. The officials were involved in the rollout of the competency levels initiative at municipalities. The viewpoint was expressed that not only was the municipality informed of the programme rollout, but it was also given assistance whenever it was required. The municipality failed to submit their 6 monthly reports on time, and also failed to submit all the reports.<sup>67</sup>

In the Annual Report for the financial year 2011/2012 the information relating to the competency levels of officials was not included.<sup>68</sup> This was also the case in the previous years. Therefore the municipality did not comply with the requirements of regulation 14(2).

### **3.4.2 Employment contracts and performance agreements since 2008**

Municipalities must report to National Treasury on whether performance agreements have been signed and whether these agreements are placed on their websites. Section 75 of the MFMA requires that these agreements be placed on the municipal website. The municipality has not placed its performance agreements on its website.<sup>69</sup> Provincial Treasury could therefore not cross-check to see if these were signed and, secondly, whether there is compliance in terms of Regulation 16(2) and (3).

#### **3.4.2.1 The current status of non-qualifying officials in the employ of the municipality as at 1 July 2008**

The Competency Regulations allow for the continued employment of this category of officials, provided they attain the required minimum qualifications over a 5 year period, before 1 January 2013.<sup>70</sup> With the exception of one official, all other officials in the category that have to meet the competency levels will not meet the requirements before 1 January 2013. The view is further held that the special merit case application to National Treasury does not cover all the target officials. As the application was almost lodged on the final date

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67 The submissions were dated 20 May 2010 and another submission dated 14 August 2012.

68 Annual Report for the municipality 2011/2012.

69 Quarterly report by provincial treasury, September 2012, p. 8.

70 Regulation 15 Minimum Competency Levels Regulations.

for applications, officials could run the risk of the application being rejected should their motivation not be accepted.

The training at the DBSA for the chief financial officer and five other senior managers is scheduled for completion in August 2013.<sup>71</sup> In the category of middle managers in finance, only one manager complies at this stage. All the other middle managers are scheduled for completion in July 2013. Their programme commenced in May 2012.<sup>72</sup> The minimum competency levels training of the three officials in the supply chain management category is not specifically mentioned in the application. This is regarded as an omission, because in the definition of '*supply chain management official*' in the Competency Regulations, it is defined as "*an official involved in the implementation of the supply chain management policy of a municipality,*" and therefore include the three supply chain management officials.

#### **3.4.2.2 The status of officials appointed after 1 July 2008**

The competency regulations provide for a conditional appointment of all officials appointed after 1 July 2007 but before 1 January 2013. This category needs to attain their higher education qualification and the required competency levels before the due date or their employment could be terminated by force of law.<sup>73</sup> The municipality was therefore required to include the attainment of compliance to the regulations in their employment contracts as a condition of employment. It, however, appears that this has not been done in the following instances:

The *municipal manager* was appointed in August 2009, on a 3 year contract. Closer scrutiny

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71 Application to National Treasury: Special Merit Cases: 06 September 2012.

72 Application to National Treasury: Special Merit Cases: 06 September 2012.

73 Steytler & De Visser (2007) 11- 15.

of the contract reveals that the requirement to attain the competency levels before 1 January 2013 was not included as a condition of employment in the performance agreement.

In the category, *senior management*, the director development planning, a section 56 manager was appointed in November 2011 on a 5 year fixed-term employment contract. The requirement to attain the desired '*higher educational qualification*' and '*competency levels*' before 1 January 2013 was also not included as a condition of employment in the performance agreement. Further, no correspondence to National Treasury is found wherein permission is sought to employ the latter incumbent on condition that he complies by the due date. This employee's continued employment depends on National Treasury granting approval that he qualifies as a special merit case.

In August 2012 the Unit Head: Assurance Services which mainly fulfils a financial function (auditing/risk/compliance) was appointed. The requirement to attain the desired '*higher educational qualification*' and '*competency levels*' before 1 January 2013 was also not included as a condition of employment in the performance agreement.

### **3.4.3 Training**

#### **3.4.3.1 Availability of grants from the National Treasury**

National Treasury designed the Competency Regulations in such a manner that the municipality could comply without interrupting the day-to-day operations of the municipality. Regular *circulars* were communicated to municipalities in order to facilitate the application of the regulations.<sup>74</sup>

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74 National Treasury MFMA Circular No. 60: 4 April 2012.

National Treasury further communicated the availability of the required training *courses*, and accredited training institutions in 2008. The municipality therefore made use of the DBSA, Wits University and Deloitte and Touche in this regard.<sup>75</sup> The municipality accessed this training through the Municipal Finance Grant (MFG). In the interview with the chief financial officer he indicated that funds were made available for the training requirements of the target group of employees by National Treasury.<sup>76</sup>

The senior management became aware of the availability of accredited institutions in the 2008/2009 financial year. Respondents to the questionnaire indicate that the municipality's internal marketing of the need to attend courses at these institutions was not adequate.<sup>77</sup>

### **3.4.3.2 Efforts by Provincial Treasury to facilitate training**

Provincial Treasury facilitated workshops and regular visits to the municipality in order to ensure that the municipality enjoyed assistance when requested. This is depicted in the quarterly reports that provincial treasury submitted to National Treasury.<sup>78</sup> In the report it is stated that capacity building is a continuous engagement wherein regular evaluations are done and shortcomings addressed.

The provincial treasury limited its interaction to discussions on how they could be of assistance, but did not consider formal interventions to get the municipality to comply with the Competency Regulations. Workshops, advice and financial and other assistance were given when so required. During these interactions the municipality normally undertook to improve its reporting and implementation, but in reality no improvement was noticed.<sup>79</sup>

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75 Letter to National Treasury by the municipality, wherein a list of the service providers is given: 6 September 2012.

76 During an interview (questionnaire 7) MFG transfers were confirmed. Verification with Province was done.

77 Respondents giving this opinion in the questionnaires used during structured interview.

78 Quarterly report by Provincial Treasury, 12 September 2012, 11.

79 During an interview (Provincial Treasury officials) workshop attendance registers served as verification.

The two 6 monthly reports that were submitted to National Treasury was also submitted to Provincial Treasury. It is through regular engagement with Provincial Treasury that shortcomings were highlighted and workshops held to get the municipality to improve on its reporting and to include the competency level status of the municipality in the latest annual report. In an MFMA Joint Meeting Report for the quarter July – September 2012, Provincial Treasury reported that all municipalities are consciously addressing the minimum competency requirements.<sup>80</sup>

In responding to the questionnaire provincial officials indicated that municipalities did not report regularly and further that funds were available but municipal managers and chief financial officers should have done more to access assistance from Treasury.<sup>81</sup> The view of these officials was that the municipal manager and chief financial officer with whom they regularly interacted, did not treat the compliance requirement with the urgency that it required. They further expressed the opinion that adequate internal mechanisms were not put in place to have officials undergo training timeously.

### **3.5 Current status quo**

#### **3.5.1 Awareness of Regulations**

In order to determine why the reporting obligation of the municipality was not followed as prescribed in the Regulations, the question of whether respondents were aware of the Regulations surfaced. In terms of awareness that an assessment was done to determine the extent of compliance, respondents gave different views. Firstly, no evidence was found that the initial assessment of officials was undertaken and submitted to National Treasury. To this end 44% of the respondents indicated that they know an initial assessment to determine the extent of compliance to the Regulations, was done. However, 56% indicated

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80 MFMA Joint Meeting Report: Provincial Treasury, 19 September 2012.

81 Response by two senior provincial treasury officials interviewed.

that they were unaware of the fact that such an assessment was done in 2008.

Responses to the questionnaire also indicated that 56% of the 16 respondents were aware of the availability of an accredited regionally based training facility, whereas 6% were unaware and 38% were unsure. This is an indication that not enough was done to create awareness of the Competency Regulations.

In the interviews with senior officials from Provincial Treasury it was confirmed that the municipality was made aware of the Competency Regulations at workshops, and during CFO Forum meetings that were held with chief financial officers.<sup>82</sup> In their responses 16 (88%) indicated that they were aware of the Regulations whilst 2 (12%) indicated that they were unaware of the Regulations. This finding is in line with the responses by provincial officials that the municipality was made aware of the requirements of the Regulations. Although management were aware of the Regulations they only started responding to the Regulations in the last twelve months. Most of the responses indicate that the accounting officer should have done much more to drive the process at municipal level.

### **3.5.2 Level of compliance**

Provincial Treasury's quarterly report corroborates the fact that the municipality submitted its reports on an irregular basis. Out of the eleven six-monthly reports, the municipality has only submitted two. Table 12 in the provincial report indicates that the municipality has not submitted its report for the first 6 months ending June 2012, alternatively that the report was submitted late.<sup>83</sup>

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82 Response by two senior provincial treasury officials interviewed.

83 MFMA Joint Meeting Report: Provincial Treasury, 19 September 2012.

The 40% of senior managers indicated in their responses to the questionnaires that compliance in terms of the Competency Regulations were only discussed at management meetings when the need arises.<sup>84</sup> In perusing the municipality's management meeting minutes it was found for the period 1 July 2011 to 30 June 2012 that compliance to the Competency Regulations was not placed on the agenda as an item.

Various job advertisements for senior managers were placed during the period July 2008 - October 2012, but the requirement to comply with the Competency Regulations was not placed in any of the adverts. The internal systems and processes which are expected to help the municipality in delivering quality services to its communities failed the municipality in that the senior management were made aware of the requirements of the Competency Regulations, but failed to put adequate checks and balances in place to reach the desired outcome.

Many of the respondents (70% of middle management and 30% of senior management) indicated that there was a problem with the internal communication and culture of the organization. Important programmes and support were not forthcoming, although Treasury made funds available.<sup>85</sup> The managers were of the opinion that the training programme of the municipality was managed in an uncoordinated fashion. There were no internal mechanisms to properly identify training needs and measures to address them.

### ***3.6 Catching up after 1 January 2013 – Special Merit Cases***

In terms of regulations 15 and 18 the National Treasury may consider applications for 'special merit cases' (SMC) wherein the enforcement of the regulations is delayed for up to eighteen months from 1 January 2013 to 1 July 2014.<sup>86</sup> Consideration of special merit cases depend on the motivation given by municipalities.

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84 Questionnaires used during structured interview: questionnaires 2 - 7.

85 Questionnaires used during structured interview: questionnaires 2 – 18.

86 National Treasury MFMA Circular No. 60: 4 April 2012, 4.

As it is evident that most of the officials in the target group at the municipality will not comply by due date, the municipality has lodged an application to National Treasury to be considered as a special merit case. The municipality was required to have applied for special merit case approval on or before 7 September 2012. The municipality's SMC application was however only lodged on 6 September 2012.<sup>87</sup> One day before the due date.

At an MFMA joint meeting held on 19 September 2012, the Provincial Treasury reported that the municipality's application was not received.<sup>88</sup> In a response from National Treasury, dated 7 October 2012, the non-receipt of the municipality's SMC application was confirmed.<sup>89</sup> This miss-communication could have dire consequences for the municipality, because a large number of senior officials could be affected negatively.

### **3.7 Contributing factors to the compliance failure**

An expose of the contribution by the three major players involved in the implementation of this initiative is given. All three of them have contributed to the failure to some extent. The research data however indicate that the municipality as the implementing agent was the major contributor to this failure. As is indicated in the paragraphs that follow, this is mainly due to a lack of meaningful participation, weak internal communication and a poor organizational culture.

#### **3.7.1 The National Treasury**

The promulgation of the Competency Regulations in June 2007 and soon thereafter issuing the associated guidelines on how to implement the Regulations, were not enough to guarantee a seamless application thereof. Even the support efforts in the form of clarifying

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87 Application to National Treasury: Special Merit Cases: 06 September 2012.

88 MFMA Joint Meeting Report: Provincial Treasury, 19 September 2012. In this report the agenda provide for reports on the status of special merit cases, but no report on the status of this municipality's application could be given.

89 Letter from National Treasury: Emphasis on application for special merit cases, dated 17 October 2012.

circulars, financial support, and availing participating learning institutions for training purposes were still inadequate.

Having put the legal framework and support structures in place is just one side of the coin. The expected outcome is another. It is therefore submitted that the initial assessment to determine the extent of compliance by the target category of officials should also have included an assessment of the standard of professionalization and the internal culture of the municipalities. This was, however, not done, therefore although the top management at the municipality were made aware and assisted to reach compliance; their internal organizational culture at the municipality prevented them from reaching the required outcome.

Having said the above, it is further submitted that the lack of managerial skills displayed by the implementers at municipal level also contributed to the failure. Therefore National Treasury's planning should also have catered for the influence of organizational culture at municipal level. In this instance compliance to the Regulations was measured in terms of the submission of six-monthly progress reports submitted by municipalities. The question therefore arises – what happens if the reports were not submitted timeously as was the case at this particular municipality. Only two out of eleven reports were submitted. There was therefore a need to get municipalities not only to submit reports timeously, but also to look at variables such as internal organizational culture in wanting to reach the desired outcome.

### **3.7.2 The Provincial Treasury**

Provincial Treasury is the organ through which National Treasury implements, monitors and assesses their programmes targeted at municipalities. To this end, Provincial Treasury interacted and monitored the implementation of the Competency Regulations at the municipality. Once again one can ask whether monitoring the timeous submission of six-monthly reports was sufficient. The outcome of the data analysis indicates that it was not.

More than just assuming the role of monitoring the implementation of National Treasury initiatives is required. Focus should have been placed on how to reach the desired outcomes, as opposed to just wanting to receive regular reports on implementation. Where funds and resources were available, monitoring should also have focused on the quality of the eventual outcomes. There was also no evidence of action taken against the municipal manager or the chief financial officer for failing to ensure meaningful participation by the target group of officials.

### **3.7.3 The municipality**

The municipal manager, chief financial officer and all senior managers cannot simply be exonerated. The municipality's organizational culture allowed officials to be apathetic in the implementation of the requirements of the Competency Regulations. These categories of officials never took responsibility in ensuring that they are adequately educated and skilled in order to contribute successfully towards service delivery. Indirectly they were sitting back and expected National Treasury to be the driving force in getting them up to standard. From a management perspective this is a very undesirable situation for any organization. It remains the duty of senior municipal officials to ensure that they are capable of performing their duties to the best of their abilities.

The municipality ignored the requirement to include compliance to the Competency Regulations in the performance agreements of those officials that are subjected to it. The municipality further ignored the inclusion of the competency requirements in job advertisements placed after July 2007.

Further to the aforementioned, it is hereby submitted that the municipal council should have played a more prominent role in ensuring adherence to the Competency Regulations. After all, the primary role of the municipal council is that of political oversight of the municipality's functions, programmes and the management of the administration. In administering its functions the municipal council must strive within its capacity to achieve the Constitutional objects of local government. One of these objects is to provide democratic and accountable government for local communities. As part of the council's

oversight role, they could have established a council committees (in terms of section 79 of the Structures Act) to oversee and monitor implementation of the Competency Regulations. In this regard the municipal administration and its council displayed a flagrant disregard of its obligation to work within the legal framework.

#### **3.7.4 The skills market**

One of the key questions that is plaguing local government, is the question – how ready is the job market to supply local government with well qualified and adequately skilled practitioners? The constitutional, legislative and policy environment, within which practitioners operate, is focused on creating a conducive environment for socio-economic development and efficient service delivery. Therefore local government requires a management corps that is qualified, experienced and committed.<sup>90</sup>

At the hand of a report by the Municipal Demarcation Board, published in September 2012, the analysis of staffing trends indicates that, in this respect, municipalities are highly volatile organizations.<sup>91</sup> While the overall attrition rate of municipal staff is not particularly high, alluding arguably to competitive conditions of service, vacancies remain substantial. Further to the aforesaid, the percentage posts filled in a municipality is a good indication of its staffing levels, which in turn has an impact on its institutional functioning. The national vacancy rate at municipalities is 72%, meaning that the average vacancy rate per municipality is estimated at 28%, which is significant in that it implies that 1 in every 4 posts at municipalities are vacant.<sup>92</sup>

At municipalities where they have budgeted adequately for posts, the vacancy rate outlined above, serves as an indicator that some municipalities are struggling to attract appropriate staffing. This is further qualified by the fact that funded posts are significantly vacant at rural municipalities. The funded vacant positions at this category of municipality are averaged

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90 Scheepers, L A (2010) Paper delivered at ILGM Conference in Rustenburg, 5.

91 Municipal Demarcation Board, 2012: State of Municipal Capacity Assessment 2010/2011: National Trends in Municipal Capacity, 10 – 15.

92 Municipal Demarcation Board, 2012: State of Municipal Capacity Assessment 2010/2011: National Trends in Municipal Capacity, 10 – 15.

at 29.6%. Trends in terms of the capacity assessment further indicate that municipal managers stay in their positions on average for 3.3 years. Nationally only 75% of section 57 positions were filled for the 2010/2011 financial year, leaving a vacancy rate of 25%. Of these vacancies the majority in relation to section 57 managers was due to dismissals and resignations. The capacity assessment data further revealed that 50% of municipal managers have a post-graduate degree and almost 1 in 3 have a masters degree. This is followed by corporate services managers with similar high qualifications.<sup>93</sup> Therefore, although some of the senior managers are well qualified, factors like a low skills base, and inadequate experience serves as proof that the market did not deliver the required individuals.

The poor commitment displayed by the municipal manager and other senior managers in complying with the Competency Regulations, serves as an indicator that the unavailability of a ready market to provide adequately skilled, well experienced and highly professional practitioners played a role in the failure of the initiative. This is also displayed when one looks at the advertisements placed by the municipality for senior managers during the period 2008 – 2012. During this period 10 out of the 18 people in the target group were appointed, and only one official fully complied with the Regulations as at October 2012.

### **3.8 Conclusion**

In this chapter the experiences of a municipality in the implementation of the Competency Regulations was illustrated at the hand of a sample chosen from senior and middle managers falling within the target group in the Regulations. The state of compliance in all the relevant categories were illustrated and to a large extent the laissez-faire manner in which implementation of the Regulations took place, was revealed in the analysis of the research data.

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93 Municipal Demarcation Board, 2012: State of Municipal Capacity Assessment 2010/2011: National Trends in Municipal Capacity, 23 – 50.

Some of the main findings in this chapter revealed that out of the 18 respondents in the sample, there was only one official that fully complied in terms of the requirements of the Competency Regulations. All the other officials will only reach compliance after 1 January 2013. A further significant finding was the negative influence of a poor organizational culture on policy implementation.



## Chapter 4: Conclusion and Recommendations

### 4.1 Introduction

The experiences at a selected municipality were analysed in order to respond to the key research questions of the study. The research questions are summarized as follows:

The primary question in the research is whether the National Treasury's policy initiative has been successful in achieving full compliance with the Competency Regulations at the due date set at 1 January 2013. If not, what are the reasons for not meeting the target date?

The second question is what were the reasons for this partial failure? In this regard one needs to determine what the contributions of the various role players were.

Based on the data analysis done in chapter 3 research findings are made, which in turn is formulated into recommendations.

### 4.2 Research findings

The research argument is based on the fact that when organs of state undertake policy interventions in order to enhance service delivery, it is always difficult to know the success or failure thereof. The findings in terms of the research questions are dealt with hereunder:

***The first, preliminary, question is whether the National Treasury's initiative has been successful in achieving full compliance with the Competency Regulations?***

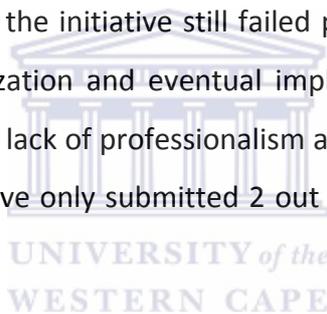
It is submitted that the implementation of the Competency Regulations at municipal level may only be partially successful. In October 2012 the Municipal Demarcation Board's (MDB) State of Municipal Capacity Assessment Report (SMCR) was released. This report confirms the highly volatile staffing challenges at municipal level. The MDB's 2012 capacity report indicates that the national vacancy rate at municipal level is 72% implying that the average vacancy rate per municipality is 28%. Although there is a slight improvement from the previous (2009) capacity report, the impact is insignificant. The fact that the staffing levels impact negatively on the institutional functioning of a municipality is compounded by the fact that 29.6% of those vacancies are funded positions.

The case study supports the above general finding that municipalities find it difficult to fill key positions, with properly skilled and experienced officials. The research data further revealed that only 1 of 18 targeted officials will fully comply in terms of the Competency Regulations by due date. The municipality therefore had to apply for Special Merit Case approval, in order to secure the continued employment of non-compliant officials. The full extent of the failure will only be known by 1 January 2013.

***The second question is - what were the reasons for this partial failure? Further, what were the contributions of the various role players?***

First, what has been the contribution of the National Treasury?

Although the National Treasury provided support efforts in the form of clarifying circulars; financial support; granted a 5 year rollout period and took overall responsibility for the monitoring and implementation, the initiative still failed partially. It is therefore submitted that perhaps in the conceptualization and eventual implementation of the initiative, not enough thought was given to the lack of professionalism at municipalities. How professional was it for the municipality, to have only submitted 2 out of 11 half-yearly reports over the rollout period?



Second, what has been the contribution of Provincial Treasury?

The Provincial Treasury as the implementation agent of National Treasury mainly monitored the submission of the six-monthly reports as was required in terms of the Compliance Regulations. In their quarterly reports Provincial Treasury indicated that continuous engagements and regular evaluations were done to address possible shortcomings. It is submitted that Provincial Treasury as the '*agent on the ground*' on behalf of National Treasury, should have played a more mentoring role. This may have helped to raise the morale and overall performance of municipal officials during the implementation phase.

Third, what has been the contribution of the municipality (administrative and political)?

The senior managers, in particular the municipal manager and chief financial officer demonstrated an organizational culture plagued by weak internal controls and poor

communication. Although the National Treasury made them aware of the requirements of the Competency Regulations, they failed to put adequate checks and balances in place. This was indicated by 70% of middle management and 30% of senior management indicating in their responses that internal communication was poor. It was further inexcusable for senior management to allow the non-inclusion of compliance to the Competency Regulations in the performance agreements of relevant officials.

In the interest of promoting accountability the municipal council should have played a more prominent oversight role during the implementation phase. The council should have established an ad hoc council committee to monitor and oversee implementation of the Competency Regulations.

Fourth, did the market of skilled personnel play a role?

It is submitted that the market could indeed not produce enough local government professionals with the required qualifications, skills and experience to respond to the requirements of the Competency Regulations. The 2012 MDB State of Municipal Capacity Assessment Report indicated that staffing trends at municipalities were highly volatile. This equates to an average of 28% vacancy rate at municipalities. Although there is an improvement in qualifications of senior managers, 1 in every 4 posts remained vacant and therefore impacts negatively on the functioning of the institution.

The research data corroborates the fact that municipalities do not attract the right type of skilled personnel as expected. Consider the fact that 10 out of the 18 officials (in the sample) that were appointed during the period 2008 – 2012, did not conform to the *higher qualifications* requirement and only 1 out of 18 conformed in terms of the *financial and supply chain management* requirement.

Finally, was it perhaps a combination of the above factors?

The research findings confirmed that it is a combination of reasons that culminated in the partial failure of the policy intervention. It remains the responsibility of the municipality to cultivate an organizational culture conducive for policy implementation. On the other hand,

organs of state like the National Treasury should include capacity challenges at municipalities in their planning model. Promulgating regulations does not necessarily equate to successful implementation – greater cooperation is needed.

### **4.3 Recommendations**

The following recommendations should be considered when policy initiatives are implemented at local government level:

**(a) Due regard should be given to operational efficiency when planning for the implementation of policy initiatives**

The research findings indicated that the successful implementation of an initiative at municipal level is very dependent on the existing organizational culture. Therefore a municipality with very good internal systems and processes will make the implementation of policy initiatives easier.

When planning an initiative there can be no assumption that the promulgation of regulations will automatically lead to compliance. Strong enforcement measures and good monitoring mechanisms need to be in place in order to assist municipalities to comply with regulations.

**(b) Building the appropriate culture of compliance by training and mentoring**

Programmes at the National and Provincial Treasury should be based on assisting municipalities to build proper organizational cultures. Legislative requirements cannot simply be ignored; therefore officials need to be trained on what constitutes suitable conduct for officials serving the public. Policy implementation is therefore a huge part of the responsibility of senior municipal officials and the municipal council. This can be achieved by introducing training programmes in association with adequate mentoring programmes.

**(c) Fully understand the context in which an initiative is to be implemented and design the associated strategy accordingly**

The research findings indicated that the market of skilled personnel did not produce the desired candidates on demand. It is therefore recommended that in situations where there is an inadequate response in the skills market; the market should be created through the introduction of integrated skills databases. Learning institutions can therefore plan their curriculums in line with market demands. The curriculums for studies in municipal administration and finance should further also be designed to include studies in professionalization and ethics.

#### **4.4 Conclusion**

The research findings respond to the primary question of the research paper, in that it was found that the implementation of the Competency Regulations at municipal level was only partially successful. The MDB's State of Municipal Capacity Assessment Report (SMCR) released in 2012, confirm that highly volatile staffing challenges are experienced at municipal level, which in turn impacts negatively on the institutional functioning of municipalities. This was supported by the case study in that only 1 in 18 officials targeted in the research fully complied with the requirements of the Competency Regulations.

In response to the secondary research question, it was found that as role players in the implementation of the Competency Regulations, the National Treasury; Provincial Treasury; the municipality (both administration and political) as well as the market of skilled personnel contributed to this partial failure.

The resultant recommendations drawn from the research findings indicate that when policy initiatives are undertaken, a contextual approach should be followed. This means that secondary factors such as professionalism, ethics, curriculum design and internal organizational culture should be factored-in as a variable when initiatives are undertaken.

The findings further gave us a better understanding of the internal organizational challenges that municipalities are confronted with when they are required to implement legislative initiatives. It is trusted that the answers to the research questions and the recommendations formulated will improve the way in which policy initiatives are planned.

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## 8. Case Law

*Paulse vs Oudtshoorn Local Municipality and others case no. 25790/2011 (WC)*

## Annexure A

### INFORMATION SHEET FOR INTERVIEWEES

Mr Larry Steyn, a masters student at the University of the Western Cape is conducting research for his masters research paper on: Professionalising Local Government: The implementation of the National Treasury's Municipal Regulations on Minimum Competency Levels. This research is aimed at collecting quantitative and qualitative information on the implementation of the Regulations by 01 January 2013, the date on which the Regulations will become fully effective.

The research will focus on, but is not limited to, collecting data by interviewing key personnel that are effected by or must implement the Regulations.

The interviews are done in terms of a structured questionnaire, which the interviewee will complete and hand back to the interviewer. The questionnaire seeks to determine the extent to which the municipality complied with implementing the requirements of the Municipal Regulations on Minimum Competency Levels.

In addition senior officials at the Gauteng Department of Finance will be interviewed in order to ascertain their views on implementation.

The information obtained in this research project will be treated confidentially and the names of the interviewees will not be disclosed. The information obtained will be presented in such a manner that any piece of information could not be attributable to any person.

All persons who participate in the project (i.e. through individual interviews) will do so voluntarily and remain anonymous. This project has been approved by the Research Ethics Committees of the University of the Western Cape. The findings of the research will be published and disseminated to stakeholders.

Should you require any further information regarding this project or wish to lodge a complaint about the manner in which it is being done, the thesis supervisor, Prof Nico Steytler could be contacted:

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## QUESTIONNAIRE: SENIOR MUNICIPAL OFFICIALS INTERVIEWED

<b>Questionnaire For The Case Study: Professionalising Local Government: The Implementation of the National Treasury: Municipal Regulations on Minimum Competency Levels</b>	
<b>Objective of the Questionnaire</b>	
The aim of the questionnaire is to determine the extent of compliance of the municipality to the requirements of the National Treasury: Municipal Regulations on Minimum Competency Levels.	
<b>Questionnaire Number:</b>	<b>16</b>
<b>Name of Interviewer:</b>	Larry Samuel Steyn
<b>Name of Municipal Official:</b>	N/A
<b>Current Position of Municipal Official:</b>	
<b>Name of Municipality:</b>	Randfontein Local Municipality
<b>Date completed:</b>	
<b>Section A: Current Educational Background</b>	
Please tick the appropriate blocks with an X:	
<b>1. Please indicate the highest level of education completed</b>	
Standard 8-9 (Gr 10-11)	1
Standard 10 (Gr 12)	2
Diploma	3
Degree (3yr) [BA; BCOM]	4
Degree (4 - 5yr) [LLB ; B Eng]	5
Honours	6
Masters/ Doctorate	7
<b>2. Are you aware of the National Treasury: Municipal Regulations on Minimum Competency</b>	

Levels?			
Yes	No		
1	2		
<b>3. Has your municipality undergone the initial assessment to evaluate the extent of: <i>higher education qualifications; work-related experience; core managerial and occupational competency requirements and <u>prescribed financial and SCM</u> competencies?</i></b>			
Yes	No	Unsure	
1	2	3	
<b>4. Have you undergone any accredited training courses for financial and SCM competency since the promulgation of the Competency Regulations in June 2007?</b>			
Yes	No		
1	2		
<b>4.1 If your response is Yes to 4 above, list the accredited modules successfully completed:</b>			
1		4	
2		5	
3		6	
<b>4.2 If your response is No to 4 above, list the reason/s for not completing any modules in order to comply:</b>			
1			
2			
3			
<b>5. Please indicate years of experience and current level and position at the municipality:</b>			
Less than 5 years' experience	1	Position as unit head on level 02	6

5 to 10 years' experience	2	Position as section manager on level 03	7
10 years and more	3	SCM manager on level 03	8
Position as Municipal Manager	4	Position is of financial nature	9
Position as sect 57 on level 01	5	Position is of non-financial nature	10

**Section B: Extent of support initiatives undertaken by government**

Please tick the appropriate blocks with an X:

**1. Was a regionally based LGSETA accredited training provider readily available to assist the municipality in providing the required training?**

Yes	No	Unsure
1	2	3

**2. Were there any problems in accessing funds to be applied for compliance purposes?**

Yes	No	Unsure
1	2	3

**3. Was the non-financial support from Treasury easily accessible?**

Yes	No	Unsure
1	2	3

**Section C: Readiness of Municipality to implement the initiative**

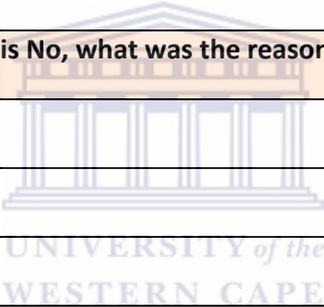
Please tick the appropriate blocks with an X:

**1. What in your opinion was the reason, if any, for management not fully participating in the competency initiative?**

Reason 01



Reason 02		
Reason 03		
<b>2. Do you have access to the Municipal Finance Management Act and Regulations (specifically the Competency Regulations)?</b>		
Yes	No	Unsure
1	2	3
<b>3. How do you view the need to comply with the Competency Regulations?</b>		
1	Unnecessary requirement	
2	Necessary for improved service delivery	
3	Will improve professional image of officials	
4	Will improve accountability of officials	
<b>4. Personally, do you think your municipality has done enough to encourage senior management to comply with the Competency Regulations?</b>		
Yes	No	
1	2	
<b>5. If your response is No on 4 above, why do you think there was a failure to comply?</b>		
Reason 01		
Reason 02		
Reason 03		
<b>6. How often does senior management discuss the requirement for compliance with the Competency Regulations in your management meetings, if at all?</b>		
1	Once monthly	

2	Once quarterly	
3	Once semesterly	
4	Once annually	
5	Only when the need arise	
6	Never	
<b>7. Has the need to comply with the Competency Regulations (before 01 January 2013) been Included into your performance agreement, as a personal performance requirement?</b>		
Yes	No	
1	2	
<b>8. If your response on 7 above is No, what was the reason for not doing so?</b>		
1	Negligence	
2	Ignorance	
3	Do not know	
<b>Section D: General</b>		
<b>1. Please provide any additional comments related to the requirement to comply with the Competency Regulations.</b>		
1		
2		
3		
4		
5		
6		

## QUESTIONNAIRE: SENIOR TREASURY OFFICIALS INTERVIEWED

<b>Questionnaire For The Case Study: Professionalising Local Government: The Implementation of the National Treasury: Municipal Regulations on Minimum Competency Levels</b>	
<b>Objective of the Questionnaire</b>	
The aim of the questionnaire is to determine the extent of compliance of the municipality to the requirements of the National Treasury: Municipal Regulations on Minimum Competency Levels.	
<b>Questionnaire Number:</b>	<b>01</b>
<b>Name of Interviewer:</b>	Larry Samuel Steyn
<b>Name of Treasury Official:</b>	N/A
<b>Current Position of Treasury Official:</b>	
<b>Name of Treasury Department:</b>	
<b>Date completed:</b>	
<b>Section A: Current Position</b>	
Please tick the appropriate blocks with an X:	
<b>1. Current Position of Treasury Official</b>	
Head of Department	1
Chief Director	2
Director	3
Other	4
<b>2. Have you been involved in the implementation of the National Treasury: Municipal Regulations on Minimum Competency Levels, at municipalities in Gauteng?</b>	

Yes	No	
1	2	

**3. What was the extent of cooperation by the municipality partaking in this case study?**

1	The municipality participated in initial assessment of educational qualification and skills.	4	The municipality applied to be 'Special Merit Case' (SMC) on time.
2	The municipality was informed of available support and assistance	5	
3	The municipality failed to submit its six monthly progress reports.	6	

**Section B: Extent of support initiatives undertaken by government**

Please tick the appropriate blocks with an X:

**1. Was a regionally based LGSETA accredited training provider readily available to assist the municipality in providing the required training?**

Yes	No	Unsure	
1	2	3	



**2. Did the municipality apply for funds or assistance in order to comply in time?**

Yes	No	Unsure	
1	2	3	

**3. Did the municipality use non-financial support from Treasury?**

Yes	No	Unsure	
1	2	3	

**Section C: Readiness of Municipality to implement the initiative**

**1. What in your opinion was the reason, for the municipality not fully cooperating with**

Treasury initiatives?	
Reason 01	
Reason 02	
Reason 03	
Please tick the appropriate blocks with an X:	
<b>2. Do you think the municipality/ municipal manager has done enough to encourage senior management to comply with the Compliance Regulations?</b>	
Yes	No
1	2
<b>3. If your response is No to 2 above, why do you think not enough was done to comply?</b>	
Reason 01	
Reason 02	
Reason 03	
	
<b>Section D: General</b>	
Please tick the appropriate blocks with an X:	
<b>1. Please provide any additional comments related to the municipality's non-compliance to the Competency Regulations.</b>	
1	
2	
3	
4	
5	
6	