**CHAPTER 3**

**MUNICIPAL ADMINISTRATION**

**3.11 RECRUITMENT OF SENIOR MANAGER: PROCESS**

**3.11.1 PURPOSE OF THE REGULATIONS ON THE APPOINTMENT AND CONDITIONS OF EMPLOYMENT OF SENIOR MANAGERS**

The Regulations on the appointment and Conditions of Employment of Senior Managers came into effect on 17th January 2014. It has been noted, with concern, that certain provisions of the Regulations are not being applied consistently by municipal councils. This manual aims at encouraging compliance with the Regulations and to provide guidelines to all municipalities on the implementation and application of the Regulations. More particularly, the procedures in relation to the recruitment, selection and appointment process of the senior managers.

There is no doubt that the Senior Managers are a key component of the municipal structures, and that the decisions to appoint them are of a kind that inherently would have important, and frequently far-reaching consequences on the governance of the municipalities. It is thus important that there be regulations, guidelines and certainty on the processes and procedures relating to their appointments, and about the caliber of persons who are appointed to these positions.

**3.11.2 LEGISLATIVE MANDATE**

The appointment of municipal managers and managers directly accountable to municipal managers is governed by Sections 54A and 56 respectively of the Municipal Systems Act, Section 171 of the Municipal Finance Management Act and Section 30 (5)(c) of the Municipal Structures Act. These appointments are further regulated by Local Government: Regulations on Appointment and Conditions of Employment of Senior Manager promulgated on 17th February 2014.

Municipal Councils must observe the following guidelines and processes when there is a vacancy at senior management level.

**3.11.3 APPLICATION**

The MEC had from 2014 after the publication of the Regulations on the appointment and Conditions of Employment of Senior Managers, monitored compliance in respect of the appointments of senior managers at all municipalities to ensure that suitably qualified candidates that meet minimum requirements are appointed and get paid salaries that are in line with the provision of the Notice and also monitor salary increases as per the provision of the Notice.

**1. Staff establishment**

In terms of regulation 4(1) a municipal manager is required, within a period of 12 months of promulgation of these regulations, to review the municipality’s staff establishment taking into account the principles set out in these regulations, the functions and powers listed in part B of schedule 4 and 5 of the constitution, chapter 5 of the Municipal systems Act as well as the strategic planning, core and support functions of the municipality.

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# 2. Creation and filling of Senior Manager post:

Regulation 5(1) stipulates that, when creating or filling a post of a senior manager, the Municipal Council must have due regard to the staff establishment, report and recommendation contemplated in regulation 4(6) and (7) of the Regulations. In terms of Regulation 5(2) the municipal council must -

1. confirm that the municipality requires the post to meet its strategic objectives;
2. ensure that a job description has been developed for the post;
3. attach to that post the remuneration and other conditions of employment ; and
4. ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

# 3. Recruitment, Selection and Appointment:

According to Regulation 6(1) the recruitment, selection and appointment of senior managers must be done in accordance with the provisions of Municipal Systems Act and procedures contemplated in section 67 that are in line with sections 54A,56,57A,72 of the said Act. Subregulation (2) provides that the appointment must be done in a manner which is consistent with the procedures entailed in regulation (10).

# 4. Determination of recruitment needs:

Regulation 7(1) provides that when the post of senior manager become vacant, or is due to become vacant, the mayor, in the case of a Municipal Manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of notification of such vacancy, obtain approval from the municipal council to fill that post in its next council meeting or as soon as it reasonably possible to do so. In addition, subregulation (2)(a) provides that filling of the vacant post cannot take place unless it has been approved by the municipal council, and if it has been budgeted for as contemplated in subregulation (2)(b). Notwithstanding subregulation (1), the speaker may convene a special meeting to obtain the approval of the municipal council.

# 5. General requirements for appointment of senior managers:

In terms of regulation 8(1) no person may be appointed as senior manager on a fixed term contract or on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he/she (a) is a South African citizen or permanent resident, (b) possesses the relevant competencies, qualifications, experience and knowledge set out in annexure A and B of these regulations. Subregulation (2) stipulates that an appointment of senior manager may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

#  a) Competence requirements for senior managers:

 In terms of Regulation 9(1) a person appointed to the position of senior manager in terms of these Regulations should comply with the competencies as set out in Annexure A to the Regulations. In addition, subregulation (2) requires the senior manager to meet the minimum requirements for higher education qualification, work experience as well as the knowledge as set out in Annexure B of the regulations.

 To ensure consistency in the recruitment, selection and appointment of senior managers, the National department of COGTA has appointed a panel of 4 Assessment Battery Training Providers to assess the competencies required of senior managers across all municipalities.

# b) National Treasury competencies:

 Regulation 6 of National Treasury competency levels for senior managers provide that, a senior manager must possess the skills, experience and capacity to fulfil duties assigned to him/her in terms of the Act. Sub regulation 6(3) provides that a senior manager must note that any failure to comply with financial management responsibility assigned to him/her may constitute financial misconduct. In terms of Regulation 7, a senior manager of a municipality must comply with the minimum competency levels required for higher educational qualification, work related experience, core managerial and occupational competencies.

# c) Educational Qualifications:

 It has been noted that clarification is required in relation to educational qualifications for a candidate to be eligible for appointment in a position of senior manager. COGTA is not a legislated body to pronounce on which qualification is equivalent to a Bachelor’s degree. If a municipality appoints a candidate who does not possess a Bachelors’ degree, proof from South African Qualifications Authority (SAQA) which states that that particular qualification is equivalent to a Bachelors’ must be obtained and included in the report to the MEC and the Minister.

# 6. Advertising a vacant post:

In terms of Regulation 10(1) the municipal manager must, within 14 days of receipt of approval from the council to advertise as contemplated in Regulation 7, ensure that the vacant post is advertised. Furthermore, regulation 10(2) stipulates that a vacant manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.

Sub regulation 10(3) provides that the advertisement for a vacant senior manager post must specify the following:

1. Job title
2. Term of appointment;
3. Place to be stationed
4. Annual total remuneration package;
5. Competency requirements of the post, this includes minimum qualifications and experience required;
6. Core functions;
7. Need for signing of an employment contract, a performance agreement and disclosure of financial interest;
8. The need to undergo security vetting;
9. The need to undergo competency assessment
10. Contact person;
11. Address where applications must be sent or delivered; and
12. Closing date which must be a minimum of 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.

Councils to note that if the advert does not include any of the requirements stipulated above, the advert and subsequent process will be considered null and void.

# 7. Application for vacant post:

Municipal Councils must customize the application forms attached to the Regulations as Annexure C and ensure that applicants who are shortlisted have completed and signed the application forms. It is important that all the application forms must be filed and kept on record as they may be required by the National Minister if the municipality applies for a waiver.

# 8. Selection Panel:

Municipalities must comply with the provisions of Regulation 12(1) which requires the Municipal Council to appoint a selection panel whose responsibility is to make a recommendation for the appointment of a suitable candidate to a vacant senior manager post.

Moreover, the Municipal Council is requested, in deciding who to appoint to the selection panel, to consider the nature of the post, the gender balance and the skills, expertise, experience and availability of the selection panel member as contemplated in Sub regulation (2).

In addition, Sub regulation (3) provides that the selection panel for the appointment of a municipal manager should consist of at least a minimum of three and not more than 5 panel members, constituted as follows;

1. The mayor, who will be the chairperson, or his/her delegate;
2. A councilor designated by the Municipal Council; and
3. At least one other person, who is not a councillor or a staff member of the municipality, and who possesses expertise and experience in the area of the advertised post.

In terms of Sub regulation (4) the selection panel for the appointment of a manager directly accountable to a municipal manager should consist of at least a minimum of three and not more than 5 panel members, constituted as follows:

1. The municipal manager, who will be the chairperson;
2. A member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
3. At least one other person, who is not a councillor or a staff member of the municipality and who has expertise or experience in the area of the advertised post.

**NOTE**: In each of the above instances, two additional persons (excluding a councillor) may be appointed, at the discretion of the municipal council, to constitute the selection panel. These may include person/s from national, provincial or local government, organised local government, or specialist expert from the private sector.

It is recommended that municipalities ensure that they consider the issue of quorum when selecting the number of panel members as there could be instances whereby one or two members may not be available during the interviews. In addition, the attention of municipalities is drawn to regulation 15 (2) which provides that the selection panel, for a specific post, has to remain the same throughout the screening and interviewing process.

Municipalities are advised not to confuse the duties of the Executive Committee with those of Municipal Council in relation to the appointment of senior managers. The Executive Committee makes recommendations in respect of the appointment as per section 30(5)(c) of the Municipal Structures Act and the Council is empowered by legislation to make an appointment. There have been instances where municipalities continue to use the Executive Committee members as the selection panel. This is done against the spirit of the Regulations.

In terms of Subregulation (5), a panel member has to disclose any interest or relationship with shortlisted candidates during the shortlisting process. Subregulation (6) further provides that a panel member must recuse himself/she from the selection panel if;-

1. His/her spouse, partner, close friend or close family member has been shortlisted for the post;
2. He/she has some form of indebtedness to a shortlisted candidate or vice versa; or
3. He/she has any other conflict of interest

In terms of Subregulation (7) a panel member and staff member must sign a declaration of confidentiality as set out in Annexure D to the Regulations so as to avert the disclosure of information to unauthorized persons. Subregulation (8) states that a staff member may provide secretarial or advisory services during the selection process, but may not form part of the selection panel.

# 9. Shortlisting of applicants:

In terms Regulation (13) (1) a Mayor, in case of Municipal manager, or a municipal manager, in the case of the manager directly accountable to the municipal manager, in consultation with the selection panel, must compile;

1. a list of all applicants who applied for an advertised post (i.e the long list); and
2. a shortlist consisting of all applications received, evaluated against the relevant competency requirements as set out in Annexure A and B of the Regulations.

The shortlisting must be finalized within 30 days of the closing date of the vacant post and in terms of subregulation (5), the list of applicants contemplated in subregulation (1) must be submitted, together with the shortlisted candidates, to the selection panel before the interviews.

# 10. Screening of candidates:

In terms of regulation (14) (1) the screening of shortlisted candidates must take place within 21 days of the finalization of the shortlisting by;-

1. Contacting a candidate’s current or previous employer;
2. Determining the validity of a candidate’s qualifications; and
3. Verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.

The attention of the municipalities is drawn to the provisions of subregulation (2) which stipulates that a written report on the outcome of the screening process must be compiled by the Mayor, in the case of municipal manager, or the Municipal Manager, in the case of manager directly accountable to the municipal manager, before the interviews take place.

# 11. Interviews:

The interviews, in terms of Regulation 15(1), have to be conducted within 21 days of screening the candidates. Subregulation (2) provides that the selection panel, for a specific post, has to remain the same throughout the screening and interviewing process.

The records of every panel member’s individual assessment of the interviewed candidates must be kept by the selection panel. In terms of subregulation (4) the determination of the candidates to be recommended for appointment must be considered by way of consensus among the members of the selection panel.

If there is no agreement amongst the panel members, a dissenting member(s) may record his/her concern in the minutes, where after the issue may be voted upon, with each member of the selection panel entitled to one vote. The selection panel must, in terms of subregulation (6), recommend second and third suitable candidates, for the purposes of minimizing delays in the filling of the post or to avoid unnecessary expenditure if the highest scoring candidate declines the offer of employment.

# 12. Selection:

In terms of regulation (16)(1) the candidates recommended for appointment to the post of senior manager must undergo a competency assessment. In light of Regulation 15(6), this means that top 3 candidates must undergo competency assessment. Subregulation (2) requires that the competency assessment tools must;

1. Be capable of being applied fairly; and
2. Not be biased against any person or group of persons.

Moreover, subregulation (3) provides that the municipality must provide in its medium term budget, funding for purposes of competency assessment and testing. In terms of subregulation (4), notwithstanding subregulation (3) and upon good cause shown, a municipality encountering cash flow problems may apply to the Local Government Sector Education and Training Authority (LGSETA) to make use of discretionary grants to fund the competency assessment for the filling of a vacant senior manager post.

The selection panel is required, in terms of subregulation (5), to submit a report and recommendation on the selection process to the Municipal Council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexure A and B, in order of preference.

**It is emphasized that the primary purpose of conducting competency assessments is to inform the selection panel and Council on the suitability of the candidate and the secondary purpose is to inform the Personal Development Plan of the appointed candidate.**

**13. Resolution of municipal council on appointment of senior managers and reporting:**

In terms of Regulation 17(1), before making a decision on an appointment, a municipal council must satisfy itself that;-

1. the candidate meets the relevant competency requirements for the post, as set out in Annexure A and B to these regulations.
2. screening has been conducted as set out in regulation 14; and
3. the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to the regulations.

A Municipal Council must, subject to subregulation (1), take a decision on the appointment of a suitable candidate as contemplated in subregulation (2). In terms of subregulation (3) a Municipal Council must;

1. Inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and
2. within 14 days of the decision referred to in subregulation (2), submit a written report to the MEC for local government regarding the appointment process and outcome.

***The report contemplated in regulation 17(3)(b) must contain***

1. Details of the advertisement, including date of issue and the name of newspapers in which the advert was published, including proof of advertisement – actual copy thereof;(NB The advert must be in a National Newspaper);
2. A list of all applicants;
3. A report contemplated in regulation 14(2) on the screening process and the outcome thereof;
4. Municipal Council resolution approving selection panel and the shortlisted candidates;
5. Competency assessment results;
6. Minutes of short-listing meeting;
7. Minutes of interviews, including scoring by all panel members;
8. Recommendations of selection panel made to the Municipal council;
9. In the event that the selection panel was constituted of all members of the executive committee, the details of the members’ recommendations;
10. Recommendation of the executive committee or Executive Mayor to the municipal council,
11. Municipal Council resolution approving the appointment of the successful candidate;
12. Application form, Curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;
13. A written confirmation by the successful candidate that he/she does not hold political office as contemplated in section 56A of the Act, as at the date of appointment;
14. The letter of appointment, outlining the term of contract, remuneration and condition of employment of the senior manager; and
15. Any other information relevant to the appointment.

The letter of appointment required in paragraph (n) must, before submission, be signed by the Municipal Manager but not given to the successful candidate in case the MEC finds that the appointment is in contravention of the statutory provisions. Furthermore, the municipality has to make sure that the above information is submitted on municipal letterhead, signed and dated where applicable.

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| **Action** | **Time frames** |
| **Municipal Manager advertises the post** | Within 14 days of Council approving filling of the vacant post |
| **Close of the advert** | After 14 days but not more than 30 days from the date the advert appeared in the national newspaper |
| **Shortlisting of applicants** | Within 30 days of the closing date of the advert |
| **Screening of candidates** | Within 21 days of finalizing the shortlisting of candidates |
| **Interviews** | Within 21 days of screening the candidates |
| **Competency assessments** | Within 21 days of interviews |
| **Council Resolution appointing successful candidate** | Within 21 days of receiving a report from the selection panel |
| **Council submits a report to the MEC** | Within 14 after resolving to appoint a suitable candidate |

**14. Appointment of Municipal Manager or Manager(s) accountable to the Municipal**

**Manager**

 (Section 57 of MSA)MM and managers directly accountable to the MM must be appointed in terms of :

* *a written employment contract, and*
* *a separate performance agreement concluded within 60 days after appointment and annually thereafter*

**15. Re-employment of dismissed person:**

In terms of regulation 18(1) a person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period , as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2 to the Regulations.

Subregulation (1) does not apply to a senior manager who has lodged a dispute in terms of applicable legislation. In a nutshell, the Regulations have also brought clarity with regard to the categories of misconduct and time frames that must expire before a person may be re-employed in a municipality. Thus, for financial misconduct, corruption or fraud it is 10 years, whereas it is 5 years for all other misconducts with the exception of breach of the Code of Conduct for Municipal Staff which can only be for 2 years.

Municipalities must, within 14 days of such dismissal or resignation, submit reports to the MEC in order to ensure that the database of all senior managers who were dismissed for misconduct or who resigned prior to the finalization of any disciplinary proceedings, is maintained and accurate. Furthermore, municipalities are kindly requested to furnish the Department with a record of vacancies including, suspensions, dismissals, settlements, ordinary resignations, retirements, termination of contracts and death every quarter, i.e. 30 September, 31 December, 31 March and 30 June.

# 16. Re-advertisement of posts:

S19 (1) of the Regulations stipulates that, the Municipal Council must inform all shortlisted candidates that their applications were not successful if there is no one, amongst the shortlisted candidates, who complies with the prescribed requirements for appointment to the post. The Council may then re-advertise the post nationally to attract a suitable candidate for appointment to the vacant post.

# 17. Secondment:

Councils are reminded that in terms of section 88 of the Municipal Structures Act, district and local municipalities within the area of that district municipality must co-operate with one another and support each other and this includes secondment of staff from local to another local, from local to district or district to local.

# 18. Upper limit of total remuneration package payable to Municipal Managers and senior managers:

The Minister of Co-operative and Traditional Affairs determine the upper limits of total remuneration packages payable to municipal managers and managers directly accountable to municipal managers as set out in the Schedule with effect from 1 July 2014

The remuneration philosophy strives to position local government as an employer that attracts, retains and motivates a high performing and skilled workforce by offering a remuneration package that satisfies the following key criteria: fairness, equity, consistency, transparency, reasonableness, affordability and practicality, including service delivery imperatives. The Notice improves the categorisation of municipalities so that municipalities can be compared to each other based on their respective duties, powers, functions and responsibilities.

This categorisation is based on sound and verifiable data on total municipal income, population and local government equitable share. The Notice is further designed in accordance with acceptable international remuneration principles. The pay scales are based on a comparable and validated market survey and also take into account the inflation trends. The elements considered in determining the pay scales are experience, qualifications, skills and competencies.