

# **OVERBERG DISTRICT MUNICIPALITY**



## **BAD DEBT WRITE-OFF POLICY**

Reviewed: 2023

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## 1. BACKGROUND

1.1 Section 96 of the Local Government: Municipal Systems Act, 32 Of 2000, provides that a municipality must collect all money that is due and payable to it, subject to the provisions of that Act and other applicable legislation.

1.2 It is recognised, however, that circumstances may arise which may make the recovery of certain debts impossible, impractical or financially unfeasible, and that such debts may have to be written off.

## 2. PURPOSE

2.1 The purpose of this policy is to provide a framework for:

2.1.1 Limiting the circumstances contemplated in 1.2;

2.1.2 Determining, when such circumstances have arisen, whether to write off any debts; and

2.1.3 The procedures for writing off such debts.

## 3. DEFINITIONS

For the purposes of this policy the following definitions are applicable:

**“Accounting Officer”** means the Municipal Manager appointed in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act no. 117 of 1998) and being the head of administration and accounting officer in terms of section 55 of the Local Government: Municipal Systems Act 2000 (Act no. 32 of 2000) and includes any person to whom the Accounting Officer has delegated a power, function or duty in respect of such a delegated power, function or duty.

**“Debt”** - means an amount owing to the Municipality;

**“Debtor”** – means a person who owes the Municipality money for services rendered;

**“Council”** – OVERBERG DISTRICT MUNICIPALITY or any of the Council’s committees or officials by virtue of authority, functions and duties delegated to them in terms of any existing law, ordinance or decree which is in force within the jurisdiction of the Council;

**“GRAP”** are standards of Generally Recognised Accounting Practice.

**“Municipality”** refers to the Overberg District Municipality.

#### **4. LEGAL CONTEXT**

- 4.1 The policy aims to give effect to the requirements and stipulations of –
- The Municipal Finance Management Act 56 of 2003 (MFMA);
  - Treasury regulations issued in terms of the MFMA; and
  - The Municipal Systems Act 32 of 2000.
  - Generally Recognised Accounting Practice (GRAP)

#### **5. SCOPE FOR APPLICATION**

- 5.1 This policy applies to all past, present and future customers of the Overberg District Municipality (the municipality) and all contract arrangements, customers and debtors of the municipality.
- 5.2 All the applicable actions as contained in the Credit Control and Debt Collection Policy of the Municipality should have been executed and implemented.

#### **6. STEPS TO BE TAKEN BEFORE WRITING OFF DEBT**

**Before consideration is given for the write-off of any debt the following steps should be taken:**

##### **6.1 CREDIT CONTROL AND DEBT COLLECTION POLICY ACTIONS**

All the applicable actions as contained in the Credit Control and Debt Collection Policy of the Municipality should have been executed and implemented.

##### **6.2 TRACING OF DEBTORS**

In the event that the debtor's sufficient contact details for a debtor is not known, all reasonable steps must be taken to trace the debtor. A reasonable effort to trace the debtor must be followed.

The Accounting Officer shall consider all other economically viable avenues for debt recovery, including the use of tracing agents, factoring of debts, recourse against sureties, guarantors, or lessees, etc.

##### **6.3 PREVENTION OF PRESCRIPTION OF DEBT**

###### **(a) Prevention:**

Proceedings out of the appropriate court having jurisdiction for the recovery of a debt must be commenced as soon as is appropriate in order to prevent prescription of the debt. A summons process for payment of the debt must be successfully concluded as soon as possible to prevent prescription of the debt in terms of the Prescription Act.

###### **(b) Prescription Act, 1969 (Act No. 68 of 1969):**

Section 10 (1) of the Prescription Act provides that a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt. The Municipality cannot legally enforce payment of a debt once the debt has prescribed, but the period of prescription is interrupted:-

- (i) By the service on the debtor of any process whereby the creditor claims payment of the debt (Section 15). "Process" means a Summons or Notice of Motion, which must actually be served on the debtor and not simply issued by the court and does NOT include a registered letter of demand.
- (ii) The debtor acknowledges liability, whether expressly or tacitly (Section 14); payment of a portion of the debt can constitute a tacit acknowledgement of liability.

The completion of prescription may also be delayed in certain circumstances (Section 13).

(c) In terms of Section 11 of the Prescription Act, 1969 (Act 68 of 1969), the periods of prescription of debts are as follows:

- (i) **Thirty years** in respect of -
  - any debt secured by a mortgage bond;
  - any judgment debt;
  - any debt in respect of any taxation imposed or levied by or under any law; and
  - any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances.
- (ii) **Fifteen years** in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (i) above.
- (iii) **Six years** in respect of a debt arising from a bill of exchange or other negotiable **instrument** or from a notaries contract, unless a longer period applies in respect of the debt in question in terms of paragraph (i) or (ii) above.
- (iv) **Three years** in respect of all other debts, save where an Act of Parliament provides otherwise.

## 6.4 GENERAL

Should all the above efforts prove to be unsuccessful, and the debtor cannot be traced, or it would be uneconomical to take the matter any further, only then must a submission be made requesting the write-off of the debt. This submission must detail all steps taken and the Municipality must maintain audit trails in such instances and document the reasons for the abandonment of the actions or claims in respect of the debt.

## 7. WRITE OFF DEBTS OWING TO THE MUNICIPALITY

### 7.1 GENERAL CONDITIONS

The Municipality will consider debts for write-off in the following general circumstances:

- (a) When debts have prescribed, as contemplated in paragraph 6.3 above;
- (b) When debts have not been recovered from the deceased, where their estates have been finalized, and recovery of the debts from the heirs is not possible;
- (c) When debts are owed by debtors who cannot be traced, notwithstanding compliance with the provisions in paragraph 6 above;
- (d) When no source documentation is available to substantiate or prove the claims, provided that the Accounting Officer must have satisfied him/herself that all reasonable steps have been taken to locate the source documents;
- (e) When the debtor has emigrated without paying the debts, leaving no assets available for attachment and the debtors' whereabouts are unknown;
- (f) When it is not economical to pursue the debt further.

**Note:** Unless affordable arrangements can be made with tracing agents or attorneys, the costs associated with the tracing of a debtor and subsequent legal costs occasioned thereby, could exceed the amount claimed. It would therefore not be in the Municipality's interest to attempt recovery of debts where the prospects of recovery are remote, and where the possibility exists that the costs associated with recovery may exceed the debt.

## 7.2 SPECIFIC CONDITIONS

The Municipality will consider debts for write-off in the following specific circumstances:

### 7.2.1 Metered Services Debt:

Debt owed to Council due to consumed metered services, i.e., Water and Electricity consumption will be regarded as irrecoverable in the following instances:

- If the debt has prescribed;
- In circumstances contemplated in 7.1 (a) to (f) above

### 4.2.2 Sundry Debt:

Debt owed to Council arising from auxiliary services rendered by Council will be regarded as irrecoverable in the following instances:

- If the debt has prescribed;
- In circumstances contemplated in 7.1 (a) to (f) above

## 7.3 FINAL ACTION

Whenever all the legal avenues, procedures and steps listed above have been exhausted, the arrear amounts should be classified as irrecoverable and should be written off by the person to whom the authority to do so has been delegated under the Municipality's system of delegations.

As soon as possible, after 30 June each year, or more regularly if requested by Council, the Accounting Officer must present to the Council a report listing the following:

- (a) For noting – details of the debts that was written off during the year ending 30 June under delegated authority, together with the reasons for the write offs; and
- (b) For consideration – details of any debt, not included under (a) above, which is believed to be irrecoverable, together with the reasons for this conclusion. The council shall then approve the write-off of such arrears, if it is satisfied with the reasons provided.

## **8. DELEGATED AUTHORITY**

The Council be given the delegated authority to write-off debt above R50 000 and the Accounting Officer the delegated authority to sub-delegate to write-off debt up to the amount of R50 000 under the following circumstances:

- (a) The debt not exceeding the amount as per Council's System of Delegation; and
- (b) All reasonable steps have been taken to recover the debt as stipulated under paragraph 6 above; and
- (d) The debt is considered to be irrecoverable in terms of any one of the conditions stipulated in paragraph 7 above.

In such cases, the reason for each write-off be listed in the report against each individual item, and audit trails for each write-off must be kept for control purposes.

## **9. CREDIT BUREAU LISTING**

Debtors whose debts are written off due to any of the following reasons may be listed with the Credit Bureaus:

- Untraceable;
- Prescription;
- Insolvent;
- Emigration.

## **10. REPORTING OF BAD DEBTS**

10.1 Bad debts written off must be reported in the financial reports under the relevant account as per the municipal standard chart of accounts.

10.2 Bad debts considered for write-off should be reported to the Accounting Officer on a regular basis.

10.3 Bad debts written off must be reported according to the GRAP requirements in the financial statements taking note of the accounting policies

10.4 Bad debts reports and calculations should be retained for audit purposes.

## **11. BAD DEBTS RECOVERED**

11.1 The approval of Council for the write-off of any debt does not mean that actions to recover the money will be terminated, however, further actions will be instituted depending on the costs involved and if debt is recovered it will be recorded in the financial records of Council as recovered.

## **12. RELATED POLICIES**

12.1 The following policies are related to this policy:

12.1.1 Credit control and debt collection policy

12.1.2 Calculation of provision for impairment of debtors

## **13. REVIEW**

This policy will be reviewed at least annually and updated if needed.

## **14. EFFECTIVE DATE**

This policy shall come into effect on 1 July 2023.