

No 26 of 2009.

***Intergovernmental Relations (Functions and Funding) Act 2009.***

Certified on : 26.10.10

## *Intergovernmental Relations (Functions and Funding)*

- “rural local-level government grant” means a grant made to a rural Local-level Government under Section 31(1)(a), or Item 15(1)(a) of the Schedule;
- “second preceding fiscal year”, in relation to another fiscal year (‘relevant fiscal year’), means the fiscal year that immediately precedes the fiscal year that immediately precedes the relevant fiscal year, for example, the 2012 fiscal year is the second preceding fiscal year to the 2014 fiscal year;
- “service delivery function grant” means a grant that is made under Section 28(1)(a), or Item 12(1)(a) of the Schedule;
- “staffing grant” means a staffing grant made under Part VI;
- “statutory body” means a body created by or under legislation;
- “Treasury Departmental Head” means the head of the department responsible for the preparation of the annual recurrent budget of the National Government;
- “turnover tax” means the turnover tax imposed by Section 19 of the *Bookmaking Act 1974*;
- “urban Local-level Government” means a Local-level Government for an area declared as an urban area under the *Local-level Governments Administration Act 1997*;
- “urban local-level government grant” means a grant made to an urban Local-level Government under Section 31(1)(b), or Item 15 b) of the Schedule.

### **PART II. - SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES.**

#### **5. DETERMINATION AND ASSIGNMENT OF SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES.**

The Head of State, acting on advice, may, by notice in the National Gazette, determine the service delivery functions and responsibilities of, and assign those service delivery functions and responsibilities to -

- (a) all or any Provincial Government; or
- (b) all or any rural Local-level Government; or
- (c) all or any urban Local-level Government; or
- (d) all or any statutory body or class of statutory bodies; or
- (e) all or any of the above.

#### **6. REASSIGNMENT OF ASSIGNED SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES.**

(1) The Head of State, acting on advice, may, by notice in the National Gazette, reassign an assigned service delivery function and responsibility to -

- (a) the National Government; or
- (b) all or any Provincial Government; or
- (c) all or any rural Local-level Government; or
- (d) all or any urban Local-level Government; or
- (e) all or any statutory body or class of statutory bodies; or
- (f) all or any of the above.



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(2) An assigned service delivery function and responsibility that is reassigned to the National Government ceases to be an assigned service delivery function and responsibility.

### **7. ALTERATION OF ASSIGNED SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES.**

The Head of State, acting on advice, may, by notice in the National Gazette, alter the description of an assigned service delivery function and responsibility.

### **8. CRITERIA.**

(1) In preparing its advice for the purposes of Section 5 or 6, the NEC shall have regard to the following:-

- (a) whether a service delivery function and responsibility is likely to be performed more effectively and efficiently by another level of government, or a statutory body or class of statutory bodies;
- (b) whether the level of government, or the statutory body or class of statutory bodies, has the capacity to perform the service delivery function and responsibility;
- (c) such other matters as the NEC considers relevant.

(2) This section does not apply to an alteration made under Section 7.

### **9. CONSULTATION.**

(1) A submission to the NEC under Section 5, 6 or 7 shall be made by the Minister responsible for Provincial and Local-level Governments.

(2) Before making a submission, the Minister responsible for Provincial and Local-level Governments shall consult with -

- (a) the Minister responsible for the preparation of the annual recurrent budget of the National Government; and
- (b) if the submission is made under Section 6, the Provincial Governors or any body representing the interests of rural or urban Local-level Governments, as the case requires.

(3) Subsection (2) does not apply to an alteration made under Section 7.

### **10. REMOVAL OF AN ASSIGNED SERVICE DELIVERY FUNCTION AND RESPONSIBILITY OF A PARTICULAR PROVINCIAL GOVERNMENT.**

(1) The Head of State, acting on advice, may, by notice in the National Gazette remove an assigned service delivery function and responsibility from a particular Provincial Government.

(2) An assigned service delivery function and responsibility that is removed from a particular Provincial Government is deemed to be a service delivery function and responsibility of the National Government on and from the date it is so removed.

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- (3) In preparing its advice, the NEC shall have regard to the following:-
- (a) whether the Provincial Government has performed the assigned service delivery function and responsibility effectively and efficiently, taking into account the total financial resources available to the Provincial Government, including but not limited to the following:-
    - (i) any breach by the Provincial Government of the conditions of the service delivery function grants made to the Provincial Government;
    - (ii) any deterioration in recognised output indicators that has occurred over a period of 3 years or more in relation to the assigned service delivery function and responsibility;
    - (iii) any sporadic or irregular expenditure in relation to the assigned service delivery function and responsibility by the Provincial Government;
  - (b) whether the National Government is likely to perform the service delivery function and responsibility more effectively and efficiently than the Provincial Government;
  - (c) whether funding is likely to be available for the National Government to perform the service delivery function and responsibility;
  - (d) such other matters as the NEC considers relevant.

(4) A submission to the NEC shall be made by the Minister, but before making a submission, the Minister shall consult with -

- (a) the Minister responsible for Provincial and Local-level Governments; and
- (b) any other Minister who will be affected by the proposed removal; and
- (c) the Provincial Government concerned; and
- (d) the NEFC; and
- (e) the Chairman of the Provincial and Local-level Service Monitoring Authority.

(5) In addition to consulting with the Provincial Government concerned under Subsection (4)(c), the Minister shall give written notice to the Provincial Government setting out the grounds for the proposed removal.

(6) The Provincial Government may, within 14 days after receiving a notice, respond in writing to the Minister.

(7) The Minister shall consider any response from the Provincial Government and, if the Minister makes a submission to the NEC, a copy of the response must accompany the submission.



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**11. RESTORATION OF AN ASSIGNED SERVICE DELIVERY FUNCTION AND RESPONSIBILITY OF A PARTICULAR PROVINCIAL GOVERNMENT.**

(1) The Head of State, acting on advice, may, by notice in the National Gazette restore a service delivery function and responsibility to a particular Provincial Government, being a service delivery function and responsibility that had previously been removed from that Provincial Government under Section 10.

(2) A service delivery function and responsibility that is restored to a particular Provincial Government is deemed to be an assigned service delivery function and responsibility of that Provincial Government on and from the date it is so restored.

(3) In preparing its advice, the NEC shall have regard to the following:-

- (a) whether the Minister is satisfied that the Provincial Government has the capacity and willingness to perform the service delivery function and responsibility;
- (b) whether the Provincial Government is likely to perform the service delivery function and responsibility more effectively and efficiently than the National Government;
- (c) whether the Provincial Government is likely to make funding available so as to be able to perform the service delivery function and responsibility;
- (d) such other matters as the NEC considers relevant.

(4) A submission to the NEC shall be made by the Minister, but before making a submission, the Minister shall consult with -

- (a) the Minister responsible for Provincial and Local-level Governments; and
- (b) any other Minister who will be affected by the proposed removal; and
- (c) the Provincial Government concerned; and
- (d) the NEFC; and
- (e) the Chairman of the Provincial and Local-level Service Monitoring Authority.

**12. NO REMOVAL OF A SERVICE DELIVERY FUNCTION AND RESPONSIBILITY OF A PARTICULAR LOCAL-LEVEL GOVERNMENT OR STATUTORY BODY.**

(1) An assigned service delivery function and responsibility of a particular urban or rural Local-level Government shall not be removed from that urban or rural Local-level Government.

(2) A service delivery function and responsibility of urban or rural Local-level Governments that has been assigned to a statutory body or a class of statutory bodies shall not be removed from that body or class.

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#### **13. REVIEW OF PERCENTAGE TO BE APPLIED TO NET NATIONAL REVENUE AMOUNT.**

If a reassignment is made under Section 6, the Minister may, in consultation with the National Economic and Fiscal Commission, review the percentage specified in Section 19(1) to be applied to the net national revenue amount.

#### **14. NOTICES UNDER SECTIONS 5, 6, 7, 10 AND 11.**

(1) A notice made or given under Sections 5, 6, 7, 10 and 11 comes into operation on the date the notice is published in the National Gazette or on the date specified in the notice, whichever is the later.

(2) The National Economic and Fiscal Commission shall prepare a consolidation of the notices under Sections 5, 6, 7, 10 and 11 at such times as the National Economic and Fiscal Commission considers appropriate.

(3) The National Economic and Fiscal Commission shall publish a consolidation in the NEFC fiscal report.

#### **15. TRANSFER OF RESPONSIBILITY FOR AN ASSIGNED SERVICE DELIVERY FUNCTION AND RESPONSIBILITY.**

(1) Nothing in this Act prevents a Provincial Government or a Local-level Government from delegating, contracting or otherwise legally transferring responsibility for performing an assigned service delivery function or responsibility to another person or body.

(2) If a Provincial Government delegates, contracts or otherwise legally transfers responsibility for performing an assigned service delivery function and responsibility to another person or body, the Provincial Government continues, for the purposes of this Act, to be responsible for performing the assigned service delivery function and responsibility.

(3) If a Local-level Government delegates, contracts or otherwise legally transfers responsibility for performing an assigned service delivery function and responsibility to another person or body, the Local-level Government continues, for the purposes of this Act, to be responsible for performing the assigned service delivery function and responsibility.

### **PART III. - THE EQUALISATION SYSTEM.**

#### **16. EQUALISATION SYSTEM DEALS WITH RECURRENT FUNDING.**

(1) The equalisation system deals with the recurrent cost of assigned service delivery functions and responsibilities of Provincial Governments and Local-level Governments.



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(2) To avoid doubt, the equalisation system does not deal with the capital cost of assigned service delivery functions and responsibilities of Provincial Governments and Local-level Governments.

#### **17. MINISTERIAL DETERMINATION APPORTIONING EQUALISATION AMOUNT.**

(1) The Minister shall, in consultation with the National Economic and Fiscal Commission, make a written determination specifying -

- (a) the province share, being the proportion of the equalisation amount available for distribution amongst Provincial Governments; and
- (b) the local-level share, being the proportion of the equalisation amount available for distribution amongst Local-level Governments.

(2) In making a determination, the Minister shall have regard to—

- (a) the most recently available estimate of the equalisation amount prepared by the National Economic and Fiscal Commission or the Treasury Departmental Head under Section 18; and
- (b) the most recently available fiscal needs amounts of Provincial Governments under Section 21 and of Local-level Governments under Section 24.

(3) A determination remains in force until it is revoked by the Minister.

(4) The NEFC shall publish a determination in the NEFC fiscal report.

#### **18. ANNUAL ESTIMATE OF EQUALISATION AMOUNT.**

(1) The National Economic and Fiscal Commission shall prepare a written estimate of the equalisation amount for each fiscal year and shall provide the estimate to the Treasury Departmental Head on or before 31 March of the immediately preceding fiscal year.

(2) If the Treasury Departmental Head is not satisfied with the NEFC's estimate of the equalisation amount for any fiscal year, he shall—

- (a) prepare an estimate of the equalisation amount for that fiscal year; and
- (b) advise the NEFC in writing of his estimate on or before 30 April of the immediately preceding fiscal year.

(3) Any estimate of the equalisation amount made by the NEFC or the Treasury Departmental Head shall not be less than the amount referred to in Section 19(1).

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(4) For the purpose of making a recommendation to the NEC under Section 20 or 23, the NEFC shall use its estimate of the equalisation amount for each fiscal year unless the Treasury Departmental Head has provided his estimate for the fiscal year to the NEFC in accordance with Subsection (2)(b).

(5) The NEFC shall publish its estimate and the estimate of the Treasury Departmental Head (if any) in the NEFC fiscal report.

#### **19. EQUALISATION AMOUNT AND NET NATIONAL REVENUE AMOUNT.**

(1) The equalisation amount for each fiscal year shall be a minimum amount at least equal to 6.57% of the net national revenue amount for the fiscal year.

(2) The net national revenue amount for each fiscal year shall be calculated using the formula -

$$\begin{array}{rcccl} \text{general tax} & & \text{mining and petroleum tax} & = & \text{net national revenue} \\ \text{revenue} & - & \text{revenue} & & \text{amount} \end{array}$$

where -

“general tax revenue” is the total amount of tax revenue received by the National Government in the second preceding fiscal year;

“mining and petroleum tax revenue” is the total of the following amounts received by the National Government in the second preceding fiscal year -

- (a) the amount of gas income tax within the meaning of the *Income Tax Act 1959*;
- (b) the amount of mining income tax within the meaning of that Act;
- (c) the amount of petroleum income tax within the meaning of that Act;
- (d) the amount of any other tax imposed in relation to any gas, mining or petroleum activity.

#### **20. NATIONAL ECONOMIC AND FISCAL COMMISSION RECOMMENDATION OF INDIVIDUAL PROVINCE SHARE.**

(1) The National Economic and Fiscal Commission shall recommend to the Minister the individual province share of each Provincial Government for each fiscal year.

(2) For the purpose of making the recommendation, the National Economic and Fiscal Commission shall calculate the fiscal needs amount of each Provincial Government under Section 21 before the NEFC calculates the individual province share of each Provincial Government under Section 22.



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(3) The NEFC shall make the recommendation in writing on or before 31 May of the immediately preceding fiscal year.

(4) The NEFC shall publish a recommendation in the NEFC fiscal report.

#### **21. FISCAL NEEDS AMOUNT OF PROVINCIAL GOVERNMENTS.**

(1) The fiscal needs amount of each Provincial Government for each fiscal year shall be calculated using the formula -

$$\begin{array}{rcccl} \text{estimated recurrent cost of assigned} & & & & \\ \text{service delivery functions and} & - & \text{assessed} & = & \text{fiscal needs} \\ \text{responsibilities} & & \text{revenue} & & \text{amount} \end{array}$$

where—

“estimated recurrent cost of assigned service delivery functions and responsibilities” means the estimate by the NEFC of the recurrent cost to the Provincial Government of performing its assigned service delivery functions and responsibilities for the fiscal year, including the necessary and incidental costs of administration of the Provincial Government;

“assessed revenue” has the meaning given by Subsections (2) and (3).

(2) Subject to Subsection (3), the assessed revenue of a Provincial Government for a fiscal year is the amount of revenue that the National Economic and Fiscal Commission considers will be available to the Provincial Government for meeting the recurrent cost of its assigned service delivery functions and responsibilities for the fiscal year, having regard to the amount of revenue that the NEFC considers is likely to be received by the Provincial Government for the fiscal year.

(3) The National Economic and Fiscal Commission may reduce the amount of assessed revenue of a Provincial Government for a fiscal year if the NEFC considers that it is appropriate to do so having regard to the amount of taxes, fees and charges likely to be collected by the Provincial Government for the fiscal year, and any other relevant circumstances.

(4) The regulations may prescribe all or any of the following:-

- (a) the method to be used by the NEFC in estimating the cost to Provincial Governments of performing their assigned service delivery functions and responsibilities;
- (b) the method to be used by the NEFC in calculating the amount of assessed revenue of Provincial Governments, including any reduction;
- (c) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to the formula.

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### **22. INDIVIDUAL PROVINCE SHARE.**

(1) If the fiscal needs amount of a Provincial Government calculated under Section 21 for a fiscal year ("relevant fiscal year") is greater than zero, the individual province share of that Provincial Government for the relevant fiscal year shall be calculated using the formula—

$$\begin{array}{ccccc} \text{equalisation} & & \text{fiscal needs amount of} & & \text{individual} \\ \text{amount for} & & \text{individual province} & & \text{province} \\ \text{provinces} & \times & \frac{\text{total fiscal needs}}{\text{amount of provinces}} & = & \text{share} \end{array}$$

where -

"equalisation amount for provinces" means the amount equal to the province share specified in the determination made under Section 17(1)(a) that is in force on 30 April of the immediately preceding fiscal year;

"fiscal needs amount of individual province" means the fiscal needs amount of that Provincial Government for the relevant fiscal year;

"total fiscal needs amount of provinces" means the total of the fiscal needs amounts of the Provincial Governments that have fiscal needs amounts greater than zero for the relevant fiscal year.

(2) In any other case, the individual province share of a Provincial Government for a fiscal year is zero.

### **23. NEFC RECOMMENDATION OF INDIVIDUAL LOCAL-LEVEL SHARE.**

(1) The NEFC shall recommend to the Minister the individual local-level share of each Local-level Government for each fiscal year.

(2) For the purpose of making the recommendation, the NEFC shall calculate the fiscal needs amount of each Local-level Government under Section 24 before the NEFC calculates the individual local-level share of each Local-level Government under Section 25.

(3) The NEFC shall make the recommendation in writing on or before 31 May of the immediately preceding fiscal year.

(4) The NEFC shall publish a recommendation in the NEFC fiscal report.

### **24. FISCAL NEEDS AMOUNT OF LOCAL-LEVEL GOVERNMENTS.**

(1) The fiscal needs amount of each Local-level Government for each fiscal year shall be calculated using the formula —



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$$\begin{array}{ccccc} \text{estimated recurrent cost of assigned} & & \text{assessed} & = & \text{fiscal needs} \\ \text{service delivery functions and} & - & \text{revenue} & & \text{amount} \\ \text{responsibilities} & & & & \end{array}$$

where—

“estimated recurrent cost of assigned service delivery functions and responsibilities” means the estimate by the NEFC of the recurrent cost to the Local-level Government of performing its assigned service delivery functions and responsibilities for the fiscal year, including the necessary and incidental costs of administration of the Local-level Government;

“assessed revenue” has the meaning given by Sections (2) and (3).

(2) Subject to Subsection (3), the assessed revenue of a Local-level Government for a fiscal year is the amount of revenue that the NEFC considers will be available to the Local-level Government for meeting the recurrent cost of its assigned service delivery functions and responsibilities for the fiscal year, having regard to the amount of revenue that the NEFC considers is likely to be received by the Local-level Government for the fiscal year.

(3) The NEFC may reduce the amount of assessed revenue of a Local-level Government for a fiscal year if the NEFC considers that it is appropriate to do so having regard to the amount of taxes, fees and charges likely to be collected by the Local-level Government for the fiscal year, and any other relevant circumstances.

(4) The regulations may prescribe all or any of the following:-

- (a) the method to be used by the NEFC in estimating the cost to Local-level Governments of performing their assigned service delivery functions and responsibilities;
- (b) the method to be used by the NEFC in calculating the amount of assessed revenue of Local-level Governments, including any reduction;
- (c) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to the formula.

## **25. INDIVIDUAL LOCAL-LEVEL SHARE.**

(1) If the fiscal needs amount of a rural Local-level Government calculated under Section 24 for a fiscal year (“relevant fiscal year”) is greater than zero, the individual local-level share of that rural Local-level Government for the relevant fiscal year shall be calculated using the formula -



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**ARRANGEMENT OF SECTIONS.**

**PART I. - PRELIMINARY.**

1. Compliance with constitutional requirements.
2. Purpose of Act.
3. Application of Act to fiscal years.
4. Interpretation.

**PART 11. - SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES.**

5. Determination and assignment of service delivery functions and responsibilities.
6. Reassignment of assigned service delivery functions and responsibilities.
7. Alteration of assigned service delivery functions and responsibilities.
8. Criteria.
9. Consultation.
10. Removal of an assigned service delivery function and responsibility of a particular Provincial Government.
11. Restoration of an assigned service delivery function and responsibility of a particular Provincial Government.
12. No removal of a service delivery function and responsibility of a particular Local-level Government or statutory body.
13. Review of percentage to be applied to net national revenue amount.
14. Notices under Sections 5, 6, 7, 10 and 11.
15. Transfer of responsibility for an assigned service delivery function and responsibility.

**PART 111. - THE EQUALISATION SYSTEM.**

16. Equalisation system deals with recurrent funding.
17. Ministerial determination apportioning equalisation amount.
18. Annual estimate of equalisation amount.



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$$\begin{array}{c} \text{equalisation} \\ \text{amount for rural} \\ \text{Local-level} \\ \text{Governments} \end{array} \times \frac{\begin{array}{c} \text{fiscal needs amount of} \\ \text{individual rural Local-} \\ \text{level Government} \end{array}}{\begin{array}{c} \text{total fiscal needs amount} \\ \text{of rural Local-level} \\ \text{Governments} \end{array}} = \begin{array}{c} \text{individual local-level} \\ \text{share} \end{array}$$

where—

“equalisation amount for rural Local-level Governments” means the amount estimated by the NEFC to be the rural Local-level Governments’ share of the local-level share specified in the determination made under Section 17(1)(b) that is in force on 30 April of the immediately preceding fiscal year;

“fiscal needs amount of individual rural Local-level Government” means the fiscal needs amount of that rural Local-level Government for the relevant fiscal year;

“total fiscal needs amount of rural Local-level Governments” means the total of the fiscal needs amounts of the rural Local-level Governments that are greater than zero for the relevant fiscal year.

(2) If the fiscal needs amount of an urban Local-level Government calculated under Section 24 for a fiscal year (“relevant fiscal year”) is greater than zero, the individual local-level share of that urban Local-level Government for the relevant fiscal year shall be calculated using the formula -

$$\begin{array}{c} \text{equalisation} \\ \text{amount for} \\ \text{urban Local-} \\ \text{level} \\ \text{Governments} \end{array} \times \frac{\begin{array}{c} \text{fiscal needs amount of} \\ \text{individual urban Local-} \\ \text{level Government} \end{array}}{\begin{array}{c} \text{total fiscal needs amount} \\ \text{of urban Local-level} \\ \text{Governments} \end{array}} = \begin{array}{c} \text{individual local-level} \\ \text{share} \end{array}$$

where—

“equalisation amount for urban Local-level Governments” means the amount estimated by the NEFC to be the urban Local-level Governments’ share of the local-level share specified in the determination made under Section 17(1)(b) that is in force on 30 April of the immediately preceding fiscal year;

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“fiscal needs amount of individual urban Local-level Government” means the fiscal needs amount of that urban Local-level Government for the relevant fiscal year;

“total fiscal needs amount of urban Local-level Governments” means the total of the fiscal needs amounts of the urban Local-level Governments that have fiscal needs amounts greater than zero for the relevant fiscal year.

(3) In any other case, the individual local-level share of a rural or an urban Local-level Government for a fiscal year is zero.

(4) For the purposes of the formulas, the regulations may prescribe either or both of the following:-

- (a) the method to be used by the NEFC in estimating the rural and urban Local-level Governments’ shares of the local-level share specified in the determination made under Section 17(1)(b);
- (b) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to the formulas.

#### **26. MINISTERIAL DIRECTION TO EXCLUDE ASSESSED REVENUE.**

(1) An additional payment made under Part VII to a Provincial Government shall be excluded from the assessed revenue of the Provincial Government when the NEFC calculates the fiscal needs amount of the Provincial Government under Section 21.

(2) The Minister may give a written direction to the NEFC that the NEFC shall exclude an amount, or a payment or a class of payments, specified in the direction from -

- (a) the assessed revenue of a Provincial Government when the NEFC calculates the fiscal needs amount of the Provincial Government under Section 21; or
- (b) the assessed revenue of a Local-level Government when the NEFC calculates the fiscal needs amount of the Local-level Government under Section 24.

(3) The NEFC shall publish a direction in the NEFC fiscal report.

#### **27. PERIODIC REVIEW OF PERCENTAGE TO BE APPLIED TO NET NATIONAL REVENUE AMOUNT.**

(1) At least once every 5 years, the Minister shall, in consultation with the NEFC, review the percentage specified in Section 19(1) to be applied to the net national revenue amount.

(2) In reviewing the percentage, the Minister may take into account all or any of the following:-

- (a) any increase or decrease in the cost to the National, Provincial or Local-level Governments of delivering services;



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- (b) any increase or decrease in revenues received by the National, Provincial or Local-level Governments;
- (c) any change in the service delivery functions and responsibilities of the National, Provincial or Local-level Governments;
- (d) any serious downturn in the national economy;
- (e) any other matter that in the opinion of the Minister is relevant to the percentage to be applied to the net national revenue amount.

### **PART IV. - GRANTS.**

#### **28. SERVICE DELIVERY FUNCTION GRANTS AND ADMINISTRATION GRANTS.**

(1) If the individual province share of a Provincial Government is greater than zero for a fiscal year, the National Government shall make to the Provincial Government for the fiscal year -

- (a) one or more service delivery function grants; and
- (b) an administration grant.

(2) The total of the service delivery function grants and administration grant made to a Provincial Government for a fiscal year shall be equal to the individual province share of the Provincial Government for the fiscal year.

(3) Each service delivery function grant and administration grant shall be made out of moneys appropriated for the purpose.

(4) If the individual province share of a Provincial Government is zero for a fiscal year, the National Government shall not make any service delivery function grants or an administration grant to the Provincial Government for the fiscal year.

#### **29. PURPOSE AND CONDITIONS OF SERVICE DELIVERY FUNCTION GRANTS.**

(1) The purpose of a service delivery function grant is to provide financial assistance to a Provincial Government for the recurrent expenditure incurred by the Provincial Government in performing its assigned service delivery functions and responsibilities.

(2) In spending a service delivery function grant, a Provincial Government shall give priority to performing its assigned service delivery functions and responsibilities in the districts in the province.

(3) A Provincial Government shall not spend a service delivery function grant on capital projects.

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(4) A Provincial Government may spend a service delivery function grant on salaries or wages only if it is a condition of the grant that the Provincial Government may spend the grant on salaries or wages.

(5) A Provincial Government may spend a service delivery function grant on administrative costs only if the administrative costs are directly related to the Provincial Government performing its assigned service delivery functions and responsibilities.

#### **30. PURPOSE AND CONDITIONS OF ADMINISTRATION GRANTS.**

(1) The purpose of an administration grant is to provide financial assistance to a Provincial Government for the necessary and incidental costs of administration of the Provincial Government.

(2) A Provincial Government may spend an administration grant on salaries or wages only if it is a condition of the grant that the Provincial Government may spend the grant on salaries or wages.

(3) A Provincial Government shall not spend an administration grant on capital projects.

#### **31. RURAL LOCAL-LEVEL GOVERNMENT GRANTS AND URBAN LOCAL-LEVEL GOVERNMENT GRANTS.**

(1) The National Government shall make for each fiscal year -

- (a) a rural local-level government grant to each rural Local-level Government; and
- (b) an urban local-level government grant to each urban Local-level Government.

(2) The amount of a rural local-level government grant made to a rural Local-level Government for a fiscal year shall be equal to the individual local-level share of the rural Local-level Government for the fiscal year.

(3) The amount of an urban local-level government grant made to an urban Local-level Government for a fiscal year shall be equal to the individual local-level share of the urban Local-level Government for the fiscal year.

(4) Each rural local-level government grant and each urban local-level government grant shall be made out of moneys appropriated for the purpose.

(5) The Treasury Departmental Head may in writing direct that a rural local-level government grant or urban local-level government grant shall be paid to a Provincial Government.



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(6) If a rural local-level government grant or urban local-level government grant is paid to a Provincial Government under a direction, the Provincial Government shall pay the rural local-level government grant or urban local-level government grant to the relevant Local-level Government within 28 days after the rural local-level government grant or urban local-level government grant is paid to the Provincial Government.

### **32. PURPOSE OF LOCAL-LEVEL GOVERNMENT GRANTS.**

The purpose of a rural local-level government grant or an urban local-level government grant is to provide financial assistance to a Local-level Government for-

- (a) the recurrent expenditure incurred by the Local-level Government in performing its assigned service delivery functions and responsibilities; and
- (b) the necessary and incidental costs of administration of the Local-level Government.

## **PART V. - SHARED NATIONAL REVENUE.**

### ***Division 1. - Goods and services tax revenue distribution.***

### **33. NATIONAL GST REVENUE TRUST.**

(1) The National GST Revenue Trust established under Section 2 of the ***Goods and Services Tax Revenue Distribution Act 2003*** continues in existence under that name.

(2) The National GST Revenue Trust consists of the following 3 trustees -

- (a) the Commissioner General;
- (b) the Governor of the Central Bank;
- (c) the Treasury Departmental Head.

(3) The purposes, functions, powers and procedures of the National GST Revenue Trust shall be as prescribed.

### **34. PROVINCIAL INLAND GST TRUSTS.**

(1) Each Provincial Inland GST Trust established under Section 2 of the ***Goods and Services Tax Revenue Distribution Act 2003*** continues in existence under its name.

(2) Each Provincial Inland GST Trust consists of the following 2 trustees -

- (a) the Commissioner General;
- (b) the Provincial Treasurer.

(3) The purposes, functions, powers and procedures of each Provincial Inland GST Trust shall be as prescribed.

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(2) Monthly refunds of GST allocated against each of the Provincial Inland GST Trust Accounts shall be debited, in proportion to gross inland provincial revenue attributed to each province, against each province's monthly gross inland provincial revenue.

#### **40. AMOUNT OF GST DISTRIBUTIONS TO PROVINCIAL GOVERNMENTS.**

Each Provincial Government shall be entitled to receive for the fiscal year commencing on 1 January 2009 and each subsequent fiscal year an amount equal to 60% of the net GST collected in the province during the second preceding fiscal year.

#### **41. ORDER OF PRECEDENCE OF DISTRIBUTIONS FROM NATIONAL GST TRUST ACCOUNT.**

Revenue held in the National GST Trust Account is appropriated and shall be paid and distributed as follows:-

- (a) the first charge shall be for the payment of refunds of GST revenue;
- (b) the second charge shall be for the payment of any amount paid under Section 40;
- (c) the balance remaining shall be paid to the Consolidated Revenue Fund.

#### **42. ORDER OF PRECEDENCE OF DISTRIBUTIONS FROM EACH PROVINCIAL INLAND GST TRUST ACCOUNT.**

Revenue held in each Provincial Inland GST Trust Account is appropriated and shall be paid and distributed as follows:-

- (a) the first charge shall be for the payment of refunds of GST revenue;
- (b) the second charge shall be for the payment of the collection and administration expenses of all of the Provincial Inland GST Trust Accounts allocated proportionately to gross inland provincial revenue against each province;
- (c) the third charge shall be for the payment of each Provincial Government's share of net inland revenue as provided for in Section 40;
- (d) the balance remaining shall be paid to the Consolidated Revenue Fund.

#### **43. TRUSTEES TO DECIDE WHEN PAYMENTS SHALL BE MADE TO THE CONSOLIDATED REVENUE FUND.**

(1) The trustees of the National GST Trust Account shall, by mutual agreement, decide the balance required to be kept in that trust account to meet the commitments arising under Section 41.

(2) The trustees of each Provincial Inland GST Trust Account shall, by mutual agreement, decide the balance required to be kept in each such trust account to meet the commitments arising under Section 42.

(3) The balances referred to in Subsections (1) and (2) may vary from week to week or month to month.



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**35. NATIONAL GST TRUST ACCOUNT.**

(1) The National GST Trust Account established under Section 3 of the *Goods and Services Tax Revenue Distribution Act 2003* continues in existence under that name.

(2) The National GST Trust Account shall be subject to the provisions as prescribed of the National GST Revenue Trust.

**36. PROVINCIAL INLAND GST TRUST ACCOUNTS.**

(1) Each Provincial Inland GST Trust Account established under Section 3 of the *Goods and Services Tax Revenue Distribution Act 2003* continues in existence under its name.

(2) Each Provincial Inland GST Trust Account shall be subject to the provisions as prescribed of the corresponding Provincial Inland GST Trust.

**37. GST REVENUE TO BE PAID INTO TRUST ACCOUNTS.**

All revenue collected from the imposition of GST shall, immediately following receipt, be paid as follows:-

- (a) the GST revenue collected pursuant to Section 6 of the *Goods and Services Tax Act 2003* shall be paid into the National GST Trust Account;
- (b) the GST revenue collected pursuant to Section 8 of the *Goods and Services Tax Act 2003* shall, to the extent that it is collected on a supply made within a province, be paid into the Provincial Inland GST Trust Account of the relevant Provincial Government.

**38. ADDITIONAL PAYMENTS TO TRUST ACCOUNTS.**

(1) Additional amounts equal to the interest accrued on deposits made into the National GST Trust Account shall be paid into the National GST Trust Account.

(2) Additional amounts equal to the interest accrued on deposits made into each Provincial Inland GST Trust Account shall be paid into that Provincial Inland GST Trust Account.

(3) Additional amounts shall be paid by the National Government into each Provincial Inland GST Trust Account as are needed to meet any shortfall in the amounts needed to meet the revenue entitlement of the Provincial Governments under Section 40.

**39. ALLOCATION OF REFUNDS.**

(1) Monthly refunds of GST shall be allocated, proportionally to revenue collections, against monthly revenue collected and deposited into the National GST Trust Account and each of the Provincial Inland GST Trust Accounts.

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(4) When the balance required to be kept at any one point in time has been reached, any further payments into the National GST Trust Account or any of the Provincial Inland GST Trust Accounts shall be paid immediately to the Consolidated Revenue Fund.

#### **44. TIME OF DISTRIBUTION.**

Each Provincial Government shall be entitled to receive, within 21 days after the end of each month, one-twelfth of the total amount of GST revenue that it is entitled to receive under Section 40.

#### **45. ADMINISTRATION OF TRUST ACCOUNTS.**

(1) The Commissioner General shall administer the National GST Trust Account and each Provincial Inland GST Trust Account.

(2) The Commissioner General shall be responsible for the transactions relating to the National GST Trust Account and each Provincial Inland GST Trust Account.

(3) The Commissioner General shall be subject to the direction of the trustees of the National GST Trust and each Provincial Inland GST Trust in his administration of the National GST Trust Account and each Provincial Inland GST Trust Account.

(4) The trustees may not direct the Commissioner General to perform any action that would breach any provision of this Act or the regulations.

### *Division 2. - Turnover tax under the Bookmaking Act 1974.*

#### **46. PROVINCIAL BOOKMAKING TRUST.**

(1) The Provincial Bookmaking Trust is established.

(2) The Provincial Bookmaking Trust consists of the following 2 trustees -  
(a) the Commissioner General;  
(b) the head of the department responsible for finance.

(3) The purposes, functions, powers and procedures of the Provincial Bookmaking Trust shall be as prescribed.

#### **47. PROVINCIAL BOOKMAKING TRUST ACCOUNT.**

(1) The Provincial Bookmaking Trust Account is established.

(2) The Provincial Bookmaking Trust Account shall be subject to the provisions as prescribed of the Provincial Bookmaking Trust.



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(4) When the balance required to be kept at any one point in time has been reached, any further payments into the National GST Trust Account or any of the Provincial Inland GST Trust Accounts shall be paid immediately to the Consolidated Revenue Fund.

#### **44. TIME OF DISTRIBUTION.**

Each Provincial Government shall be entitled to receive, within 21 days after the end of each month, one-twelfth of the total amount of GST revenue that it is entitled to receive under Section 40.

#### **45. ADMINISTRATION OF TRUST ACCOUNTS.**

(1) The Commissioner General shall administer the National GST Trust Account and each Provincial Inland GST Trust Account.

(2) The Commissioner General shall be responsible for the transactions relating to the National GST Trust Account and each Provincial Inland GST Trust Account.

(3) The Commissioner General shall be subject to the direction of the trustees of the National GST Trust and each Provincial Inland GST Trust in his administration of the National GST Trust Account and each Provincial Inland GST Trust Account.

(4) The trustees may not direct the Commissioner General to perform any action that would breach any provision of this Act or the regulations.

### *Division 2. - Turnover tax under the Bookmaking Act 1974.*

#### **46. PROVINCIAL BOOKMAKING TRUST.**

(1) The Provincial Bookmaking Trust is established.

(2) The Provincial Bookmaking Trust consists of the following 2 trustees -  
(a) the Commissioner General;  
(b) the head of the department responsible for finance.

(3) The purposes, functions, powers and procedures of the Provincial Bookmaking Trust shall be as prescribed.

#### **47. PROVINCIAL BOOKMAKING TRUST ACCOUNT.**

(1) The Provincial Bookmaking Trust Account is established.

(2) The Provincial Bookmaking Trust Account shall be subject to the provisions as prescribed of the Provincial Bookmaking Trust.

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**48. TURNOVER TAX REVENUE TO BE PAID INTO PROVINCIAL BOOKMAKING TRUST ACCOUNT. -**

All revenue collected from the imposition of turnover tax shall, immediately following receipt, be paid into the Provincial Bookmaking Trust Account.

**49. AMOUNT OF TURNOVER TAX DISTRIBUTIONS TO PROVINCIAL GOVERNMENTS.**

Subject to Section 51(a), each Provincial Government shall be entitled to receive for the fiscal year commencing on 1 January 2009 and each subsequent fiscal year the total amount of turnover tax paid for the second preceding fiscal year by the licensed bookmakers within that province.

**50. ADDITIONAL PAYMENTS TO PROVINCIAL BOOKMAKING TRUST ACCOUNT.**

(1) Additional amounts equal to the interest accrued on deposits made into the Provincial Bookmaking Trust Account shall be paid into the Provincial Bookmaking Trust Account.

(2) Additional amounts shall be paid by the National Government into the Provincial Bookmaking Trust Account as are needed to meet any shortfall in the amounts needed to meet the revenue entitlement of the Provincial Governments under Section 49.

**51. ORDER OF PRECEDENCE OF DISTRIBUTIONS FROM PROVINCIAL BOOKMAKING TRUST ACCOUNT.**

Revenue held in the Provincial Bookmaking Trust Account is appropriated and shall be paid and distributed as follows:-

- (a) the first charge shall be for the payment of the collection and administration expenses of the Provincial Bookmaking Trust Account allocated proportionately to turnover tax collected against licensed bookmakers in each province;
- (b) the second charge shall be for the payment of turnover tax to each Provincial Government in accordance with Section 49;
- (c) the balance remaining (if any) shall be paid to the Consolidated Revenue Fund.

**52. TIME OF DISTRIBUTION.**

Subject to Section 51(a), each Provincial Government shall be entitled to receive, within 28 days after the end of each month, one-twelfth of the total amount of turnover tax revenue that it is entitled to receive under Section 49.

**53. ADMINISTRATION OF PROVINCIAL BOOKMAKING TRUST ACCOUNT.**

(1) The Commissioner General shall administer the Provincial Bookmaking Trust Account.



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19. Equalisation amount and net national revenue amount.
20. National Economic and Fiscal Commission recommendation of individual province share.
21. Fiscal needs amount of Provincial Governments.
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29. Purpose and conditions of service delivery function grants.
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33. National GST Revenue Trust.
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44. Time of distribution.
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#### ***Division 2. - Turnover tax under the Bookmaking Act 1974.***

46. Provincial Bookmaking Trust.
47. Provincial Bookmaking Trust Account.
48. Turnover tax revenue to be paid into Provincial Bookmaking Trust Account.
49. Amount of turnover tax distributions to Provincial Governments.
50. Additional payments to Provincial Bookmaking Trust Account.

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(2) The Commissioner General shall be responsible for the transactions relating to the Provincial Bookmaking Trust Account.

(3) The Commissioner General shall be subject to the direction of the trustees of the Provincial Bookmaking Trust in his administration of the Provincial Bookmaking Trust Account.

(4) The trustees may not direct the Commissioner General to perform any action that would breach any provision of this Act or the regulations.

### **PART VI. - STAFFING GRANTS.**

#### **54. STAFFING GRANTS IN RELATION TO PROVINCIAL GOVERNMENTS.**

(1) The National Government shall make a staffing grant in relation to each Provincial Government for each fiscal year.

(2) A staffing grant shall be made out of moneys appropriated for the purpose.

(3) This section does not prevent a Provincial Government from applying any revenues raised by the Provincial Government to the cost of its staffing or the staffing of Local-level Governments in the province.

#### **55. AMOUNT AND PURPOSE OF STAFFING GRANTS.**

(1) The maximum amount of a staffing grant in relation to a Provincial Government shall be an amount equal to the sum of -

- (a) the salaries and allowances, and the cost of other conditions of employment, for -
  - (i) the offices of the Provincial Administrator and the District Administrators in the province as provided for in Section 73 of the *Organic Law*; and
  - (ii) the extended service of the National Departments and agencies in the province as provided for in Section 80 of the *Organic Law*; and
  - (iii) the teaching services in the province as provided for in Section 77 of the *Organic Law*; and
  - (iv) the other staff in the province as provided for in Section 78 of the *Organic Law*; and
  - (v) the members of the Secretariat of the Provincial Government as provided for in Section 81 of the *Organic Law*; and



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- (b) the salaries and allowances of the members of the Secretariat of the Local-level Governments in the province as provided for in Section 81 of the *Organic Law* and the cost of other conditions of employment of the members of the Secretariat.

(2) A staffing grant shall be applied towards the cost of salaries and allowances, and the cost of other conditions of employment, referred to in Subsection (1).

(3) The amount of a staffing grant in some circumstances may be less than the full cost of funding the relevant salaries, allowances and other conditions of employment.

### **PART VII. - ADDITIONAL PAYMENTS.**

#### **56. ADDITIONAL PAYMENT FOR PERFORMING A SERVICE DELIVERY FUNCTION AND RESPONSIBILITY OF THE NATIONAL GOVERNMENT.**

(1) The National Government may make an additional payment to a Provincial Government if the Provincial Government is proposing to perform, or is performing, for one or more fiscal years a service delivery function and responsibility of the National Government.

(2) An additional payment shall not be made unless a national function agreement is entered into under Section 57.

(3) The amount of an additional payment in some circumstances may be less than the full cost as estimated by the NEFC of a Provincial Government performing the service delivery function and responsibility.

(4) A Provincial Government may apply any revenue raised by the Provincial Government toward the cost of performing the service delivery function and responsibility.

(5) An additional payment shall be made out of moneys appropriated for the purpose.

#### **57. NATIONAL FUNCTION AGREEMENT.**

(1) The Minister, on behalf of the National Government, may enter into a national function agreement with the Provincial Governor, on behalf of the Provincial Government.

(2) Before entering into a national function agreement, the Minister shall consult with -

- (a) the NEFC; and
- (b) any other Minister whose department will be directly affected by the proposed additional payment; and

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- (c) the Chairman of the Provincial and Local-level Service Monitoring Authority.

(3) The Minister shall take into account the following matters in deciding whether to enter into a national function agreement -

- (a) the amount the National Government spends on performing the service delivery function and responsibility;
- (b) any estimate by the NEFC of the cost to the Provincial Government of performing the service delivery function and responsibility;
- (c) the capacity and systems that the Provincial Government has in place to perform the service delivery function and responsibility;
- (d) such other matters as the Minister considers relevant.

(4) A national function agreement may deal with all or any of the following:-

- (a) the service delivery function and responsibility to be performed by the Provincial Government for the National Government;
- (b) subject to the approval of the Parliament, the amount of an additional payment;
- (c) the conditions to which an additional payment is subject, including conditions dealing with any of the kind of matters mentioned in Section 66(1)(a) to (f);
- (d) the amount (if any) that a Provincial Government shall apply toward the cost of performing the service delivery function and responsibility;
- (e) such other matters as are relevant to the agreement.

#### **58. ADDITIONAL PAYMENT IN RELATION TO EMERGENCY OR DISASTER.**

(1) The National Government may make an additional payment to a Provincial Government to provide financial assistance for additional expenses of the Provincial Government that have arisen because of an unforeseen emergency or a disaster (whether natural or otherwise) within the province.

(2) The Treasury Departmental Head may, in writing, impose conditions to which an additional payment is subject.

(3) An additional payment shall be made out of moneys appropriated for the purpose.



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**PART VIII. - PAYMENTS TO ADDRESS DEVELOPMENT NEEDS.**

**59. INDEX OF LEAST DEVELOPED DISTRICTS.**

(1) The NEFC shall establish an index of least developed districts that ranks districts by taking into account their development needs.

(2) The NEFC shall review the index from time to time and make such changes to the index as are necessary to keep it up to date.

(3) The NEFC shall advise the Minister responsible for planning matters of any changes made to the index.

(4) The index shall be kept in such form as the NEFC determines.

**60. LEAST DEVELOPED DISTRICT GRANT.**

(1) The National Government may make a least developed district grant in relation to a Provincial Government for a fiscal year.

(2) The purpose of least developed district grants is to provide financial assistance for the development needs of districts.

(3) The National Government shall determine the amount of a least developed district grant.

(4) A least developed district grant shall be made out of moneys appropriated for the purpose.

**61. NEFC TO ADVISE IN RELATION TO LEAST DEVELOPED DISTRICT GRANTS.**

(1) The NEFC shall provide advice to the Minister responsible for planning matters on the following:-

- (a) the allocation of least developed district grants amongst districts;
- (b) the manner of making and the timing of least developed district grants;
- (c) the conditions to which least developed district grants should be subject;
- (d) such other relevant matters requested by the NEC.

(2) In preparing its advice, the NEFC shall have regard to the index of least developed districts, and may have regard to all or any of the following:-

- (a) the fiscal capacity that a Provincial Government has to address development needs in some or all of the districts within the province through the use of its own resources;
- (b) the amount of revenue that a Provincial Government receives or is likely to receive in a fiscal year;

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- (c) the benefits received by a Provincial Government and Local-level Governments within the province from prescribed infrastructure developments as described in the *Income Tax Act 1959*;
- (d) any other benefits that a Provincial Government and Local-level Governments within the province are likely to receive.

(3) The Minister responsible for planning matters may, in writing, impose conditions to which a least developed district grant is subject.

#### **62. OTHER PAYMENTS TO ADDRESS DEVELOPMENT NEEDS.**

- (1) The National Government may make other payments to Provincial Governments for development or capital purposes, including but not limited to -
- (a) payments that are provided for in agreements relating to the development of natural resources; and
  - (b) payments for development projects.

(2) The Minister responsible for planning matters may, in writing, impose conditions to which a payment is subject.

(3) If requested by the Minister responsible for planning matters, the NEFC shall prepare a report for that Minister on any payment or proposed payment.

(4) A payment shall be made out of moneys appropriated for the purpose.

### **PART IX. - MONITORING AND COMPLIANCE.**

#### **63. PROVINCIAL GRANTS AGREEMENTS.**

(1) The Minister, on behalf of the National Government, and the Provincial Governor, on behalf of the Provincial Government, may enter into a provincial grants agreement.

(2) A provincial grants agreement may make provision for any matter which relates to the expenditure or management of all or any of the revenue of, or available to, a Provincial Government.

(3) A provincial grants agreement may specify how the individual province share of a Provincial Government is to be divided into service delivery function grants and the administration grant made to the Provincial Government.

(4) Subject to Section 66 (2), a provincial grants agreement may specify the conditions to which all or any of the following grants or payments are subject -

- (a) service delivery function grants;
- (b) administration grants;
- (c) staffing grants;
- (d) additional payments under Part VII;



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- (e) payments to address development needs under Part VIII;
- (f) any other payments received by a Provincial Government.

(5) A provincial grants agreement shall specify the year or years to which it applies and shall be in writing.

(6) The regulations may prescribe the process to be followed in negotiating provincial grants agreements.

(7) A budget and expenditure instruction applies to the extent that it is not inconsistent with any provision of a provincial grants agreement.

#### **64. FUNCTION AND ADMINISTRATION GRANTS DETERMINATIONS.**

(1) The Minister may, in consultation with the National Economic and Fiscal Commission, make a function and administration grants determination in relation to all or any of the Provincial Governments that have not entered into a provincial grants agreement.

(2) A function and administration grants determination shall specify for each of the Provincial Governments in relation to which the determination applies -

- (a) subject to the approval of the Parliament, the amount of each service delivery function grant and the administration grant to be made to the Provincial Government; and
- (b) the kind and purpose of each service delivery function grant and the administration grant to be made to the Provincial Government.

(3) Without limiting Subsection (2)(a), the amount of a service delivery function grant or an administration grant made to a Provincial Government may be -

- (a) expressed as a percentage of the individual province share of the Provincial Government; or
- (b) expressed as a minimum amount; or
- (c) set at zero.

(4) A function and administration grants determination may deal differently with different Provincial Governments or classes of Provincial Governments.

(5) A function and administration grants determination shall specify the fiscal year or years to which it applies and shall be in writing.

(6) The National Economic and Fiscal Commission shall publish any function and administration grants determination in the NEFC fiscal report.

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### **65. BUDGET AND EXPENDITURE INSTRUCTIONS.**

(1) Subject to Section 66(2), the Treasury Departmental Head may, in consultation with the NEFC, determine the conditions to which all or any of the following grants are subject –

- (a) service delivery function grants;
- (b) administration grants;
- (c) rural local-level government grants;
- (d) urban local-level government grants;
- (e) staffing grants;
- (f) payments to address development needs under Part VIII.

(2) The Treasury Departmental Head shall, as soon as possible after determining the conditions, issue a budget and expenditure instruction setting out the conditions.

(3) If requested by a Provincial Government or a Local-level Government, the Treasury Departmental Head shall send a copy of a budget and expenditure instruction to the Provincial Government or Local-level Government.

(4) A budget and expenditure instruction shall be in writing.

### **66. CONDITIONS.**

(1) Without limiting the conditions that can be included in a provincial grants agreement or a budget and expenditure instruction, such conditions may deal with all or any of the following:-

- (a) what the grants, payments or other revenue are to be used for;
- (b) the timing and nature of expenditure of grants, payments or other revenue;
- (c) the expected outputs to be achieved from the spending of grants, payments or other revenue;
- (d) the management of grants, payments or other revenue;
- (e) the nature, format and timing of information to any person or body on the expenditure of grants, payments or other revenue;
- (f) the budget preparation process, including consultation with stakeholders.

(2) A condition of a provincial grants agreement or a budget and expenditure instruction in relation to -

- (a) a service delivery function grant shall not be inconsistent with the purpose referred to in Section 29(1) or the purpose determined by the Minister under Section 64(2)(b) (if applicable), or any of the conditions referred to in Sections 29(2) to (5); and
- (b) an administration grant shall not be inconsistent with the purpose referred to in Section 30(1) or any of the conditions referred to in Sections 30(2) and (3); and



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- (c) a rural local-level government grant or an urban local-level government grant shall not be inconsistent with the purpose referred to in Section 32; and
- (d) a staffing grant shall not be inconsistent with the purpose referred to in Section 55(2).

#### **67. NON-COMPLIANCE WITH CONDITIONS.**

(1) The Treasury Departmental Head may issue a non-compliance notice under Subsection (2) to -

- (a) a Provincial Government if the Provincial Government does not comply with a condition in a provincial grants agreement or a budget and expenditure instruction; or
- (b) a Local-level Government if the Local-level Government does not comply with a condition in a budget and expenditure instruction.

(2) A non-compliance notice shall be in writing and shall specify -

- (a) the circumstances of the alleged non-compliance; and
- (b) the action required to be taken to rectify the alleged non-compliance and the date by which the action must be undertaken; and
- (c) the reporting requirements in relation to the expenditure of any grants or payments.

(3) If a Provincial Government does not comply with a condition in a provincial grants agreement or a budget and expenditure instruction, the Minister may make a written determination specifying all or any of the following:-

- (a) the manner in which the expenditure of any service delivery function grant, administration grant, staffing grant or payment under Part VII or VIII is to be managed, including but not limited to, the requirement for expenditure to be supervised or authorised by a person or body specified in the determination;
- (b) the Provincial Government shall repay to the National Government such amount as is specified in the determination;
- (c) the National Government may delay the making of any further grants or payments to the Provincial Government until such time as is specified in the determination.

(4) If a Local-level Government does not comply with a condition in a budget and expenditure instruction, the Minister may make a written determination specifying all or any of the following:-

- (a) the manner in which the expenditure of any rural local-level government grant or urban local-level government grant is to be managed, including but not limited to, the requirement for expenditure to be supervised or authorised by a person or body specified in the determination;

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- (b) the Local-level Government shall repay to the National Government such amount as is specified in the determination;
- (c) the National Government may delay the making of any further rural local-level government grants or urban local-level government grants to the Local-level Government until such time as is specified in the determination.

(5) The Minister may make a determination under Subsection (3) or (4) in relation to a breach of a condition, whether or not a notice of non-compliance in relation to that breach has been issued under Subsection (2).

#### **68. MONITORING AND REPORTING ON EXPENDITURE.**

(1) The NEFC may, in consultation with the Chairman of the Provincial and Local-level Service Monitoring Authority, and the Treasury Departmental Head, monitor, and report on, the expenditure of all or any of the following:-

- (a) service delivery function grants;
- (b) administration grants;
- (c) rural local-level government grants;
- (d) urban local-level government grants;
- (e) staffing grants;
- (f) additional payments under Part VII;
- (g) payments to address development needs under Part VIII;
- (h) any other revenue available to a Provincial Government or a Local-level Government.

(2) The NEFC shall publish a report on expenditure in the NEFC fiscal report.

(3) The NEFC may provide to the Minister such information in relation to its findings under Subsection (1) as the NEFC considers appropriate.

(4) Nothing in this section affects the carrying out of quarterly budget reviews by the Treasury Departmental Head.

#### **69. NEFC FISCAL REPORT.**

(1) The NEFC shall prepare a fiscal report each year.

(2) The fiscal report shall contain the following:-

- (a) any consolidation of notices under Sections 5, 6, 7, 10 and 11 prepared by the NEFC under Section 14;
- (b) any Ministerial determination made under Section 17 or Item 2 of the Schedule;
- (c) the NEFC's estimate of the annual equalisation amount and the estimate by the Treasury Departmental Head (if any) made under Section 18 or Item 3 of the Schedule;
- (d) the NEFC's recommendation of the individual province share made under Section 20 or Item 5 of the Schedule;



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- (e) the NEFC's recommendation of the individual local-level share made under Section 23 or Item 8 of the Schedule;
- (f) any direction made by the Minister under Section 26 or Item 11 of the Schedule;
- (g) any function and administration grants determination made by the Minister under Section 64;
- (h) the NEFC's report on expenditure under Section 68;
- (i) such other information about intergovernmental finances as the NEFC considers appropriate.

(3) The NEFC shall provide a copy of the report to the Minister before 1 November of each year, and the Minister shall cause the report to be published as part of the annual budget documentation for the National Government.

- (4) The NEFC shall also provide a copy of the report to the following:-
- (a) the Provincial Governors and the Provincial Administrators;
  - (b) any body representing the interests of Local-level Governments;
  - (c) the Chairman of the Provincial and Local-level Service Monitoring Authority;
  - (d) such other persons as the NEFC considers appropriate.

### **PART X. - MISCELLANEOUS PROVISIONS.**

#### **70. DISCRIMINATORY PROVINCIAL OR LOCAL-LEVEL REVENUE LAW.**

(1) The Minister may, by notice in the National Gazette, declare invalid a provincial or local-level law imposing a tax, fee or charge if -

- (a) the law discriminates unjustly between any persons; or
- (b) the law discriminates against persons who are not residents of the province; or
- (c) the law discriminates against products originating or coming from outside the province; or
- (d) the rate of the tax, fee or charge is set, wholly or partially, at an unreasonably high level; or
- (e) the law unreasonably disadvantages any other Provincial Government or Local-level Government.

(2) Within 30 days after the date of publication of the notice in the National Gazette, the Minister shall give written reasons to the Provincial or Local-level Government for his decision to declare a law invalid.

(3) The Minister may make a written order related to or consequent on his decision and shall give a copy of the order to the Provincial or Local-level Government within 30 days after the making of the order.

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- 52. Time of distribution.
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- 54. Staffing grants in relation to Provincial Governments.
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- 56. Additional payment for performing service delivery function and responsibility of the National Government.
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- 59. Index of least developed districts.
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- 63. Provincial grants agreements.
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**71. ACT DOES NOT CONFER RIGHT OF ACTION.**

(1) Nothing in this Act confers on any Provincial Government or the National Capital District Commission any right of action in respect of any turnover tax, or licence fee payable under the *Bookmaking Act 1974*, that was not distributed by the National Government to that Provincial Government or the National Capital District Commission in accordance with the *Bookmaking Act 1974* before the commencement of this Act.

(2) Nothing in this Act confers on any Provincial Government any right of action in respect of any Goods and Services Tax imposed by the *Goods and Services Tax Act 2003* that was not distributed by the National Government to that Provincial Government before the commencement of this Act.

(3) Nothing in this Act confers on any Provincial Government or Local-level Government any right of action in respect of any grants payable under the *Organic Law* that were not paid to that Provincial Government or Local-level Government before the commencement of this Act.

(4) Nothing in this Act confers on any Provincial Government or Local-level Government any right of action in respect of any tax, fee or charge imposed by any law made by that Provincial Government or Local-level Government before the commencement of this Act.

**72. DELEGATION.**

(1) A person may, by writing under his hand, delegate any of his functions or powers under this Act, other than this power of delegation.

(2) Subsection (1) does not apply to -

- (a) any function or power of the Minister under this Act; or
- (b) any function or power of the NEFC under this Act.

**73. GUIDELINES.**

(1) The Treasury Departmental Head may issue written guidelines for the purposes of this Act.

(2) Before issuing a guideline, the Treasury Departmental Head shall consult with the NEFC.

(3) A guideline does not have the force of law.

(4) A guideline shall not be inconsistent with this Act, the regulations, a provincial grants agreement, a provincial grants determination or a budget and expenditure instruction.

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**74. REGULATIONS.**

The Head of State, acting with, and in accordance with, the advice of the NEC, may make regulations, not inconsistent with this Act, prescribing all matters that -

- (a) are required or permitted to be prescribed; or
- (b) are necessary or convenient to be prescribed in order to give effect to this Act.

**75. CONTINUING EFFECT OF POWERS AND DUTIES.**

If a power is conferred on a person, or a duty imposed on a person, under this Act, the power may be exercised, or the duty shall be performed, from time to time as required.

**76. TRANSITIONAL ARRANGEMENTS.**

The Schedule contains provisions dealing with intergovernmental financial arrangements during the transition period.



*Intergovernmental Relations (Functions and Funding)*

Sec. 76

**SCHEDULE**

**INTERGOVERNMENTAL FINANCIAL ARRANGEMENTS  
DURING THE TRANSITION PERIOD.**

**PART 1. - PRELIMINARY MATTERS.**

**1. DEFINITIONS.**

In this Schedule, unless the contrary intention appears -

“transition period” means the period starting on 1 January 2009 and ending on 31 December 2013;

“transitional individual local-level guarantee” means -

- (a) in relation to a rural Local-level Government, the amount appropriated to a Provincial Government for the rural local-level government grant for the rural Local-level Government for the fiscal year commencing on 1 January 2008; or
- (b) in relation to an urban Local-level Government, the amount appropriated to a Provincial Government for the urban local-level government grant for the urban Local-level Government for the fiscal year commencing on 1 January 2008;

“transitional individual province guarantee”, in relation to a Provincial Government in relation to a fiscal year of the transition period, means the total of the following amounts -

- (a) if the GST distribution received by that Provincial Government for the fiscal year commencing on 1 January 2008 under the *Goods and Services Tax Revenue Distribution Act 2003* is greater than the GST distribution received by that Provincial Government for the fiscal year of the transition period, the difference between the two GST distribution amounts;
- (b) the amount appropriated for the block grant for the fiscal year commencing on 1 January 2008 for that Provincial Government under the *Organic Law*;
- (c) the total amount appropriated for the function grants for the fiscal year commencing on 1 January 2008 for that Provincial Government under the *Organic Law*;
- (d) the amount appropriated for the derivation grant for the fiscal year commencing on 1 January 2008 for that Provincial Government under the *Organic Law*.

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**PART 2. - EQUALISATION SYSTEM DURING TRANSITION PERIOD.**

**2. MINISTERIAL DETERMINATION APPORTIONING EQUALISATION AMOUNT.**

(1) The Minister shall, in consultation with the NEFC, make a written determination specifying -

- (a) the proportion of the equalisation amount available for the total of the transitional individual province guarantees of all Provincial Governments; and
- (b) the proportion of the equalisation amount available for the total of the transitional individual local-level guarantees of all Local-level Governments; and
- (c) the province share, being the proportion of the equalisation amount available for distribution amongst Provincial Governments; and
- (d) the local-level share, being the proportion of the equalisation amount available for distribution amongst Local-level Governments.

(2) In making a determination, the Minister shall have regard to the following:-

- (a) the amount that will be required to fund the total of the transitional individual province guarantees of all Provincial Government;
- (b) the amount that will be required to fund the total of the transitional individual local-level guarantees of all Local-level Governments;
- (c) the most recently available estimate of the equalisation amount prepared by the NEFC or the Treasury Departmental Head under Item 3;
- (d) the most recently available fiscal needs amounts of Provincial Governments under Item 6 and of Local-level Governments under Item 9.

(3) A determination remains in force until it is revoked by the Minister.

(4) The NEFC shall publish a determination in the NEFC fiscal report.

**3. ESTIMATE OF EQUALISATION AMOUNT.**

(1) The NEFC shall prepare a written estimate of the equalisation amount for each fiscal year of the transition period and shall provide the estimate to the Treasury Departmental Head on or before 31 March of the immediately preceding fiscal year.

(2) If the Treasury Departmental Head is not satisfied with the NEFC's estimate of the equalisation amount for any fiscal year, he shall -



### *Intergovernmental Relations (Functions and Funding)*

- (a) prepare an estimate of the equalisation amount for that fiscal year; and
- (b) advise the NEFC in writing of his estimate on or before 30 April of the immediately preceding fiscal year.
- (3) Any estimate of the equalisation amount for any fiscal year of the transition period made by the NEFC or the Treasury Departmental Head shall not be less than an amount equal to the percentage of the net national revenue amount for that fiscal year specified in Item 4(1).
- (4) For the purpose of making a recommendation to the NEC under Clause 5 or 8, the NEFC shall use its estimate of the equalisation amount for each fiscal year unless the Treasury Departmental Head has provided his estimate to the NEFC in accordance with Subsection (2)(b) of this item.
- (5) The NEFC shall publish its estimate and the estimate of the Treasury Departmental Head (if any) in the NEFC fiscal report.

#### **4. EQUALISATION AMOUNT AND NET NATIONAL REVENUE AMOUNT.**

- (1) The equalisation amount for each fiscal year of the transition period in Column 2 of the table shall be at least equal to the corresponding minimum amount in Column 3 of the table -

<b>TABLE</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Fiscal year</b>	<b>Minimum amount</b>
1	2009	5.12 % of the net national revenue amount for the 2008 fiscal year
2	2010	5.48 % of the net national revenue amount for the 2009 fiscal year
3	2011	5.84 % of the net national revenue amount for the 2010 fiscal year
4	2012	6.21 % of the net national revenue amount for the 2011 fiscal year
5	2013	6.57 % of the net national revenue amount for the 2012 fiscal year

- (2) The net national revenue amount for each fiscal year of the transition period shall be calculated using the formula -

$$\begin{array}{rcl} \text{general tax} & - & \text{mining and petroleum tax} \\ \text{revenue} & & \text{revenue} \\ & & = \text{net national revenue} \\ & & \text{amount} \end{array}$$

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where -

“general tax revenue” is the total amount of tax revenue received by the National Government in the second preceding fiscal year;

“mining and petroleum tax revenue” is the total of the following amounts received by the National Government in the second preceding fiscal year-

- (a) the amount of gas income tax within the meaning of the *Income Tax Act 1959*;
- (b) the amount of mining income tax within the meaning of that Act;
- (c) the amount of petroleum income tax within the meaning of that Act;
- (d) the amount of mining levy under Section 160 of that Act for the fiscal year that commenced on 1 January 2007;
- (e) the amount of any other tax imposed in relation to any gas, mining or petroleum activity.

### **5. NEFC RECOMMENDATION OF INDIVIDUAL PROVINCE SHARE.**

(1) The NEFC shall recommend to the Minister the individual province share of each Provincial Government for each fiscal year of the transition period.

(2) For the purpose of making the recommendation, the NEFC shall calculate the fiscal needs amount of each Provincial Government under Item 6 before the NEFC calculates the individual provincial share of each Provincial Government under Item 7.

(3) The NEFC shall make the recommendation in writing on or before 31 May of the immediately preceding fiscal year.

(4) The NEFC shall publish a recommendation in the NEFC fiscal report.

### **6. FISCAL NEEDS AMOUNT OF PROVINCIAL GOVERNMENTS.**

(1) The fiscal needs amount of each Provincial Government for each fiscal year of the transition period shall be calculated using the formula -

$$\begin{array}{l} \text{estimated recurrent cost of service} \\ \text{delivery functions and responsibilities} \end{array} - \begin{array}{l} \text{assessed} \\ \text{revenue} \end{array} = \begin{array}{l} \text{fiscal needs} \\ \text{amount} \end{array}$$

where -



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“estimated recurrent cost of service delivery functions and responsibilities” means the estimate by the NEFC of the recurrent cost for the fiscal year to the Provincial Government of performing its service delivery functions and responsibilities, including the necessary and incidental costs of administration of the Provincial Government (whether or not the service delivery functions and responsibilities are assigned under Part II of this Act);

“assessed revenue” has the meaning given by Subsections (2) and (3) of this Item.

(2) Subject to Subsection (3), the assessed revenue of a Provincial Government for a fiscal year is the total of the following amounts:-

- (a) the amount of revenue that the NEFC considers will be available to the Provincial Government for meeting the recurrent cost of its assigned service delivery functions and responsibilities for the fiscal year, having regard to the amount of revenue that the NEFC considers is likely to be received by the Provincial Government for the fiscal year; and
- (b) the amount of the transitional individual province guarantee for the Provincial Government for the fiscal year.

(3) The NEFC may reduce the amount in Subsection (2)(a) of this Item if the NEFC considers that it is appropriate to do so having regard to the amount of taxes, fees and charges likely to be collected by the Provincial Government for the fiscal year, and any other relevant circumstances.

(4) The regulations may prescribe all or any of the following:-

- (a) the method to be used by the NEFC in estimating the cost to Provincial Governments of performing their assigned service delivery functions and responsibilities;
- (b) the method to be used by the NEFC in calculating the amount of assessed revenue of Provincial Governments, including any reduction;
- (c) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to the formula.

#### **7. INDIVIDUAL PROVINCE SHARE.**

(1) If the fiscal needs amount of a Provincial Government calculated under Item 6 for a fiscal year of the transition period (“relevant fiscal year”) is greater than zero, the individual province share of that Provincial Government for the relevant fiscal year shall be calculated using the formula -

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$$\text{transitional individual province guarantee} + \left( \text{equalisation amount for provinces} \times \frac{\text{fiscal needs amount of individual province}}{\text{total fiscal needs amount of provinces}} \right) = \text{individual province share}$$

where -

“transitional individual province guarantee” means the transitional individual province guarantee of that Provincial Government for the relevant fiscal year;

“equalisation amount for provinces” means the amount equal to the province share specified in the determination made under Item 2(1)(c) that is in force on 30 April of the immediately preceding fiscal year;

“fiscal needs amount of individual province” means the fiscal needs amount of that Provincial Government for the relevant fiscal year;

“total fiscal needs amount of provinces” means the total of the fiscal needs amounts of the Provincial Governments that have fiscal needs amounts greater than zero for the relevant fiscal year.

(2) In any other case, the individual province share of a Provincial Government for a fiscal year during the transition period shall be equal to the transitional individual province guarantee of that Provincial Government for that fiscal year.

#### **8. NEFC RECOMMENDATION OF INDIVIDUAL LOCAL-LEVEL SHARE.**

(1) The NEFC shall recommend to the Minister the individual local-level share of each Local-level Government for each fiscal year of the transition period.

(2) For the purpose of making the recommendation, the NEFC shall calculate the fiscal needs amount of each Local-level Government under Item 9 before the NEFC calculates the individual local-level share of each Local-level Government under Item 10.

(3) The NEFC shall make the recommendation in writing on or before 31 May of the immediately preceding fiscal year.

(4) The NEFC shall publish a recommendation in the NEFC fiscal report.

#### **9. FISCAL NEEDS AMOUNT OF LOCAL-LEVEL GOVERNMENTS.**

(1) The fiscal needs amount of each Local-level Government for each fiscal year of the transition period shall be calculated using the formula -

$$\text{estimated recurrent cost of service delivery functions and responsibilities} - \text{assessed revenue} = \text{fiscal needs amount}$$



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where -

“estimated recurrent cost of service delivery functions and responsibilities” means the estimate by the NEFC of the recurrent cost for the fiscal year to the Local-level Government of performing its service delivery functions and responsibilities, including the necessary and incidental costs of administration of the Local-level Government (whether or not the service delivery functions and responsibilities are assigned under Part II of this Act);

“assessed revenue” has the meaning given by Subsections (2) and (3) of this Item.

(2) Subject to Subsection (3), the assessed revenue of a Local-level Government for a fiscal year is the total of the following amounts:-

- (a) the amount of revenue that the NEFC considers will be available to the Local-level Government for meeting the recurrent cost of its assigned service delivery functions and responsibilities for the fiscal year, having regard to the amount of revenue that the NEFC considers is likely to be received by the Local-level Government for the fiscal year; and
- (b) the amount of the transitional individual local-level guarantee for the Local-level Government for the fiscal year.

(3) The NEFC may reduce the amount in Subsection (2)(a) of this Item if the NEFC considers that it is appropriate to do so having regard to the amount of taxes, fees and charges likely to be collected by the Local-level Government for the fiscal year, and any other relevant circumstances.

(4) The regulations may prescribe all or any of the following:-

- (a) the method to be used by the NEFC in estimating the cost to Local-level Governments of performing their assigned service delivery functions and responsibilities;
- (b) the method to be used by the NEFC in calculating the amount of assessed revenue of Local-level Governments, including any reduction;
- (c) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to the formula.

### **10. INDIVIDUAL LOCAL-LEVEL SHARE.**

(1) If the fiscal needs amount of an urban Local-level Government calculated under Item 9 for a fiscal year of the transition period (“relevant fiscal year”) is greater than zero, the individual local-level share of that urban Local-level Government for the relevant fiscal year shall be calculated using the formula -

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$$\text{transitional individual local-level guarantee} + \left( \text{equalisation amount for urban Local-level Governments} \times \frac{\text{fiscal needs amount of individual urban Local-level Government}}{\text{total fiscal needs amount of urban Local-level Governments}} \right) = \text{individual local-level share}$$

where—

“transitional individual local-level guarantee” means the transitional individual local-level guarantee of that urban Local-level Government for the relevant fiscal year;

“equalisation amount for urban Local-level Governments” means the amount estimated by the NEFC to be the urban Local-level Governments’ share of the local-level share specified in the determination made under Item 2(1)(d) that is in force on 30 April of the immediately preceding fiscal year;

“fiscal needs amount of individual urban Local-level Government” means the fiscal needs amount of that urban Local-level Government for the relevant fiscal year;

“total fiscal needs amount of urban Local-level Governments” means the total of the fiscal needs amounts of the urban Local-level Governments that have fiscal needs amounts greater than zero for the relevant fiscal year.

(2) In any other case, the individual local-level share of an urban Local-level Government for a fiscal year during the transition period shall be equal to the transitional individual local-level guarantee of that urban Local-level Government for that fiscal year.

(3) If the fiscal needs amount of a rural Local-level Government calculated under Item 9 for a fiscal year of the transition period (“relevant fiscal year”) is greater than zero, the individual local-level share of that rural Local-level Government for the relevant fiscal year shall be calculated using the formula -

$$\text{transitional individual local-level guarantee} + \left( \text{equalisation amount for rural Local-level Governments} \times \frac{\text{fiscal needs amount of individual rural Local-level Government}}{\text{total fiscal needs amount of rural Local-level Governments}} \right) = \text{individual local-level share}$$



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**SCHEDULE.**

**INTERGOVERNMENTAL FINANCIAL ARRANGEMENTS DURING  
THE TRANSITION PERIOD.**

**PART 1. - PRELIMINARY MATTERS.**

1. Definitions.

**PART 2 - EQUALISATION SYSTEM DURING TRANSITION PERIOD.**

2. Ministerial determination apportioning equalisation amount.
3. Estimate of equalisation amount.
4. Equalisation amount and net national revenue amount.
5. NEFC recommendation of individual province share.
6. Fiscal needs amount of Provincial Governments.
7. Individual province share.
8. NEFC recommendation of individual local-level share.
9. Fiscal needs amount of Local-level Governments.
10. Individual local-level share.
11. Excluded assessed revenue.

**PART 3 – GRANTS DURING TRANSITION PERIOD.**

12. Service delivery function grants and administration grants.
13. Purpose and conditions of service delivery function grants.
14. Purpose and conditions of administration grants.
15. Rural local-level government grants and urban local-level government grants.
16. Purpose of local-level government grants.
17. Application of Part IX.

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where -

“transitional individual local-level guarantee” means the transitional individual local-level guarantee of that rural Local-level Government for the relevant fiscal year;

“equalisation amount for rural Local-level Governments” means the amount estimated by the NEFC to be the rural Local-level Governments’ share of the local-level share specified in the determination made under Item 2(1)(d) that is in force on 30 April of the immediately preceding fiscal year;

“fiscal needs amount of individual rural Local-level Government” means the fiscal needs amount of that rural Local-level Government for the relevant fiscal year;

“total fiscal needs amount of rural Local-level Governments” means the total of the fiscal needs amounts of the rural Local-level Governments that have fiscal needs amounts greater than zero for the relevant fiscal year.

(4) In any other case, the individual local-level share of a rural Local-level Government for a fiscal year during the transition period shall be equal to the transitional individual local-level guarantee of that rural Local-level Government for that fiscal year.

### **11. EXCLUDED ASSESSED REVENUE.**

(1) An additional payment made under Part VII of this Act to a Provincial Government shall be excluded from the assessed revenue of the Provincial Government when the NEFC calculates the fiscal needs amount of the Provincial Government under Item 6.

(2) The Minister may give a written direction to the NEFC that the NEFC shall exclude an amount, or a payment or a class of payments, specified in the direction from -

- (a) the assessed revenue of a Provincial Government when the NEFC calculates the fiscal needs amount of the Provincial Government under Item 6; or
- (b) the assessed revenue of a Local-level Government when the NEFC calculates the fiscal needs amount of the Local-level Government under Item 9.

(3) The NEFC shall publish a direction in the NEFC fiscal report.



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**PART 3. - GRANTS DURING TRANSITION PERIOD.**

**12. SERVICE DELIVERY FUNCTION GRANTS AND ADMINISTRATION GRANTS.**

(1) The National Government shall make to each Provincial Government for each fiscal year of the transition period -

- (a) one or more service delivery function grants; and
- (b) an administration grant.

(2) The total of the service delivery function grants and an administration grant made to each Provincial Government for each fiscal year of the transition period shall be equal to the individual province share of that Provincial Government for that fiscal year.

(3) Each service delivery function grant and administration grant shall be made out of moneys appropriated for the purpose.

**13. PURPOSE AND CONDITIONS OF SERVICE DELIVERY FUNCTION GRANTS.**

(1) The purpose of a service delivery function grant is to provide financial assistance to a Provincial Government for the recurrent expenditure incurred by the Provincial Government in performing its assigned service delivery functions and responsibilities.

(2) In spending a service delivery function grant, a Provincial Government shall give priority to performing its assigned service delivery functions and responsibilities in the districts in the province.

(3) A Provincial Government shall not spend a service delivery function grant on capital projects.

(4) A Provincial Government may spend a service delivery function grant on salaries or wages only if it is a condition of the grant that the Provincial Government may spend the grant on salaries or wages.

(5) A Provincial Government may spend a service delivery function grant on administrative costs only if the administrative costs are directly related to the Provincial Government performing its assigned service delivery functions and responsibilities.

**14. PURPOSE AND CONDITIONS OF ADMINISTRATION GRANTS.**

(1) The purpose of an administration grant is to provide financial assistance to a Provincial Government for the necessary and incidental costs of administration of the Provincial Government.

### *Intergovernmental Relations (Functions and Funding)*

(2) A Provincial Government may spend an administration grant on salaries or wages only if it is a condition of the grant that the Provincial Government may spend the grant on salaries or wages.

(3) A Provincial Government shall not spend an administration grant on capital projects.

#### **15. RURAL LOCAL-LEVEL GOVERNMENT GRANTS AND URBAN LOCAL-LEVEL GOVERNMENT GRANTS.**

(1) The National Government shall make for each fiscal year of the transition period -

- (a) a rural local-level government grant to each rural Local-level Government; and
- (b) an urban local-level government grant to each urban Local-level Government.

(2) The amount of a rural local-level government grant made to a rural Local-level Government for a fiscal year shall be equal to the individual local-level share of the rural Local-level Government for the fiscal year.

(3) The amount of an urban local-level government grant made to an urban Local-level Government for a fiscal year shall be equal to the individual local-level share of the urban Local-level Government for the fiscal year.

(4) Each rural local-level government grant and each urban local-level government grant shall be made out of moneys appropriated for the purpose.

(5) The Treasury Departmental Head may in writing direct that a rural local-level government grant or urban local-level government grant shall be paid to a Provincial Government.

(6) If a rural local-level government grant or urban local-level government grant is paid to a Provincial Government under a direction, the Provincial Government shall pay the rural local-level government grant or urban local-level government grant to the relevant Local-level Government within 28 days after the rural local-level government grant or urban local-level government grant is paid to the Provincial Government.

#### **16. PURPOSE OF LOCAL-LEVEL GOVERNMENT GRANTS.**

The purpose of a rural local-level government grant or an urban local-level government grant is to provide financial assistance to a Local-level Government for -

- (a) the recurrent expenditure incurred by the Local-level Government in performing its service delivery functions and responsibilities (whether or not the service delivery functions and responsibilities are assigned under Part II of this Act); and



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- (b) the necessary and incidental costs of administration of the Local-level Government.

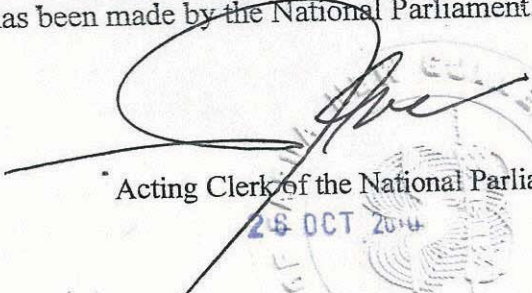
**17. APPLICATION OF PART IX.**

(1) Part IX of this Act applies in relation to a service delivery function grant and an administration grant made to a Provincial Government for each fiscal year of the transition period.

(2) Part IX of this Act applies in relation to a rural local-level government grant made to a rural Local-level Government and an urban local-level government grant made to an urban Local-level Government for each fiscal year of the transition period.

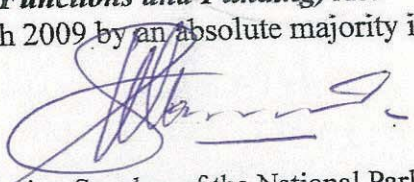
(3) This section has effect despite Section 3 of this Act.

I hereby certify that the above is a fair print of the *Intergovernmental Relations (Functions and Funding) Act 2009* which has been made by the National Parliament.

  
Acting Clerk of the National Parliament

26 OCT 2009

I hereby certify that the *Intergovernmental Relations (Functions and Funding) Act 2009* was made by the National Parliament on 11 March 2009 by an absolute majority in accordance with the *Constitution*.

  
Acting Speaker of the National Parliament

26 OCT 2009



No. of 2009.

## AN ACT

entitled

### *Intergovernmental Relations (Functions and Funding) Act 2009,*

Being an Act relating to the service delivery functions and responsibilities of Provincial Governments and Local-level Governments, and to implement Division IV. 2A of the *Organic Law on Provincial Governments and Local-level Governments*, and for related purposes,

MADE by the National Parliament and deemed to have come into operation on 1 January 2008.

## PART 1. PRELIMINARY.

### 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (qualified rights) of the *Constitution*, namely—

- (a) the right to privacy conferred by Section 49 of the *Constitution*;
- and
- (b) the right to freedom of information conferred by Section 51 of the *Constitution*;

is a law that is made for the purposes of complying with Section 38 of the *Constitution*, and to the extent that the regulation or restriction is necessary taking into account of the National Goals and Directive Principles and the Basic Social Obligation for the purpose of giving effect to the public interest in public order, public welfare and the development of under-privileged or less advanced groups or areas.

### 2. PURPOSE OF ACT.

The purpose of this Act is to assist —

- (a) all Provincial Governments to achieve a similar financial capacity; and
- (b) all rural Local-level Governments to achieve a similar financial capacity; and



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(c) all urban Local-level Governments to achieve a similar financial capacity,  
so as to be able to meet their legally mandated service delivery responsibilities.

### **3. APPLICATION OF ACT TO FISCAL YEARS.**

(1) Subject to Subsections (2) and (3), this Act applies in relation to the fiscal year commencing on 1 January 2009 and each subsequent fiscal year.

(2) Parts III and IV apply in relation to the fiscal year commencing on 1 January 2014 and each subsequent fiscal year.

(3) Section 76 and the Schedule apply in relation to the fiscal year commencing on 1 January 2009 up to and including the fiscal year commencing on 1 January 2013.

### **4. INTERPRETATION.**

In this Act, unless the contrary intention appears -

“additional payment” means an additional payment made under Part VII;

“administration grant” means a grant made under Section 28(1)(b), or Item 12(1)(b) of the Schedule;

“assigned service delivery function and responsibility” means a service delivery function and responsibility that is assigned under Section 5, or deemed to be an assigned service delivery function and responsibility under Section 11(2);

“budget and expenditure instruction” means a budget and expenditure instruction issued under Section 65;

“capital project” means a project involving any one or more of the following:-

- (a) the construction, alteration or extension of a road, bridge, airstrip, wharf, jetty, building or any other facility;
- (b) the development or preparation of land for building or other purposes;
- (c) the purchase of land, with or without buildings;
- (d) the acquisition of an interest in a company, trust or other legal entity for investment purposes;

“Commissioner General” means the Commissioner General of Internal Revenue;

“development needs” means the disparities between different areas of the country which may result from all or any of the following:-

- (a) a lack of infrastructure; or
- (b) a poor state of repair of infrastructure; or
- (c) factors inhibiting economic activity or investment; or
- (d) the wealth or otherwise of the population; or
- (e) health indicators; or
- (f) educational levels; or
- (g) remoteness; or

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(h) potential threats to food security; or

(i) any other factor; or

“equalisation amount” means the amount calculated under Section 19(1), or Item 4(1) of the Schedule;

“fiscal needs amount” means -

(a) in relation to a Provincial Government, the fiscal needs amount of the Provincial Government calculated under Section 21, or Item 6 of the Schedule; or

(b) in relation to a Local-level Government, the fiscal needs amount of the Local-level Government calculated under Section 24, or Item 9 of the Schedule;

“fiscal year” means the period of 12 months commencing on 1 January of any year;

“function and administration grants determination” means a function and administration grants determination made under Section 64;

“GST” means the goods and services tax imposed by the *Goods and Services Tax Act 2003*;

“gross inland provincial revenue” means the total GST revenue collected in or attributed to each province in the prescribed manner;

“index of least developed districts” means the index of least developed districts established under Section 59;

“individual local-level share”, in relation to a Local-level Government, means the amount of the Local-level Government’s individual local-level share calculated under Section 25, or Item 10 of the Schedule;

“individual province share”, in relation to a Provincial Government, means the amount of the Provincial Government’s individual province share calculated under Section 22, or Item 7 of the Schedule;

“least developed district grant” means a least developed district grant made under Section 60;

“licensed bookmaker” means a bookmaker licensed under the *Bookmaking Act 1974*;

“Local-level Government” means an urban Local-level Government or a rural Local-level Government;

“Local-level Government Special Purposes Authority” means a Special Purposes Authority established under Section 42 of the *Local-level Governments Administration Act 1997*;

“local-level share” means the proportion of the equalisation amount available for distribution amongst Local-level Governments determined under Section 17(1)(b), or Item 2(1)(d) of the Schedule;

“Minister” means the Minister responsible for the preparation of the annual recurrent budget of the National Government, except in Part VIII where it means the Minister responsible for planning matters;

“national function agreement” means a national function agreement made under Section 57;



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- “National GST Revenue Trust” means the trust called the National GST Revenue Trust continued in existence by Section 33;
- “National GST Trust Account” means the trust account called the National GST Trust Account continued in existence by Section 35;
- “NEC” means the National Executive Council established by Section 149 of the *Constitution*;
- “NEFC” means the National Economic and Fiscal Commission established by Section 117 of the *Organic Law*;
- “NEFC fiscal report” means the fiscal report prepared by the NEFC under Section 69;
- “net GST collected” means the GST collected pursuant to Section 8 of the *Goods and Services Tax Act 2003*, less any refunds paid pursuant to Section 91 of that Act, allocated in the manner provided for in Section 39;
- “net inland revenue” means the gross inland provincial revenue as reduced by refunds allocated against that revenue in accordance with Section 39;
- “net national revenue amount” means the amount of net national revenue calculated under Section 19(2), or Item 4(2) of the Schedule;
- “*Organic Law*” means the *Organic Law on Provincial Governments and Local-level Governments*;
- “prescribed” means prescribed by the regulations;
- “province share” means the proportion of the equalisation amount available for distribution amongst Provincial Governments determined under Section 17(1)(a), or Item 2(1)(c) of the Schedule;
- “Provincial Bookmaking Trust” means the Provincial Bookmaking Trust established by Section 46;
- “Provincial Bookmaking Trust Account” means the Provincial Bookmaking Trust Account established by Section 47;
- “Provincial Government” does not include the National Capital District or the Autonomous Region of Bougainville, except in Division V.1 where a reference to a Provincial Government includes a reference to the National Capital District;
- “provincial grants agreement” means a provincial grants agreement made under Section 63;
- “Provincial Inland GST Trust”, in relation to a Provincial Government, means the Provincial Inland GST Trust of that Provincial Government continued in existence by Section 34;
- “Provincial Inland GST Trust Account”, in relation to a Provincial Government, means the Provincial Inland GST Trust Account of that Provincial Government continued in existence by Section 36;
- “recurrent expenditure” means expenditure relating to the ongoing operating costs of performing assigned service delivery functions and responsibilities and includes the regular routine maintenance of infrastructure;
- “regulations” means the regulations made under this Act;
- “rural Local-level Government” means a Local-level Government other than an urban Local-level Government;