

TARIFFS AND DEBT COLLECTION IN THE MUNICIPAL SYSTEMS ACT

Tariff and debt collection policies are of paramount importance for local government. Local government derives most of its revenue from the levying of rates and tariffs. Also, these policies have a huge developmental impact in terms of service provision to the poor and in terms of promoting local economic development. This article summarises and comments on Chapters 8 and 9 of the Municipal Systems Act (hereafter the Act), which provides the new legal framework for tariffs and debt collection. The parts of chapter 8 dealing with service delivery through partnerships have been dealt with on pages 3-6.

TARIFF PRINCIPLES

Section 74(1) instructs a municipality to adopt and implement a tariff policy that applies to the fees, levied on municipal services. The Act lists a number of principles that should be reflected in the policy. In general, users must be treated in a fair way. The amount charged to an individual must generally be in proportion to his or her use of the service (s 74(2)(b)). An interesting question arises as to what this means for the levying of 'flat rates'. It can be submitted that this is no longer possible as the Act stipulates that the individual charge must be generally proportional to that which the individual has used. It can be argued that this militates against a flat rate, even if the flat rate is in proportion to the use of that area, because the Act requires a link to *individual* use.

Poor households must have access to at least basic services (s 74(2)(c)). This principle is further implemented in regulation 10 of the Local Government: Municipal Planning and Performance Management Regulations (hereafter the IDP Regulations) where two of the general key performance indicators promulgated by the na-

tional Minister deal with access to basic services, namely:

- the percentage of households with access to a basic level of water, sanitation, electricity and solid waste removal; and
- the percentage of households earning less than R1100 per month with access to free basic services.

The Act does not define 'poor households'. The IDP Regulations link access to free services to households earning less than R1100 per month (see also *LGL Bulletin* 2001(2) at p 7). This appears to be the accepted benchmark.

Measures that can be used to achieve access to basic services for poor households are:

- tariffs that cover costs only;
- special tariffs or life line tariffs for local levels of consumption or basic consumption (the provision of free basic services resorts under this category); and
- any other method of cross-subsidisation (s 74(2)(c)(i)-(iii)).

The tariffs must reflect the costs that the municipality incurs in delivering the service (s 74(2)(d)). With regard to the level, the Act says that tariffs must facilitate financial sustainability of the service. Other

sources of income can be taken into account (s 74(2)(e)). In appropriate circumstances surcharges on tariffs can be levied (s 74(2)(f)). The Act allows for special tariffs for the promotion of local economic development. These special tariffs can be applied to 'categories of commercial and industrial users' (s 74(2)(g)). The Act calls on municipalities to encourage the economic use of resources, recycling and other environmental objectives through a tariff policy (s 74(2)(h)).

Differentiation

The tariff policy may differentiate between categories of users, debtors, service providers, services, service standards, geographical areas and other matters. In other words, the policy may prescribe different rules, tariffs or standards for different users. However, this may not amount to unfair discrimination (s 74(3)). When a court is asked to assess whether or not the different rules amount to unfair discrimination, it will ask the following questions:

- Is there a legitimate purpose for the differentiation?
- Is that purpose being served by the differentiation?
- On what basis does the policy differentiate?

If the basis is one of the grounds in section 9(3) of the Constitution (e.g. race), the following questions will have to be answered:

- On whom does the differentiation impact negatively? Does that person or group belong to a disadvantaged community?
- Was there a good reason for the differentiation?
- To what extent does the differentiation infringe on the rights of other citizens? In this respect, it is important that, if the municipality

cross-subsides tariffs for poor households, the Act instructs the municipality to *fully disclose the extent of cross-subsidisation* (s 74(2)(i)). In the *Pretoria v Walker* case, the Constitutional Court emphasised that the right of citizens to a transparent and accountable local government is infringed if differentiation is applied secretly or haphazardly (see *LGL Bulletin* 1999(3) at p 6).

Services delivered through partnerships

If services are delivered through a service delivery agreement with an external service provider (see pages 3-6), the municipality remains responsible for controlling the setting of tariffs by the service provider (s 81(1)(d)). The municipal council retains the right to set, review or adjust tariffs within its tariff policy (s 81(3)). The service delivery agreement can allow the service provider to adjust tariffs within the limitations set by the municipal council.

Tariff by-laws

Section 75(1) of the Act says that a municipality must adopt by-laws to give effect to its tariff policy. This does not mean that *the tariff policy itself* must be adopted as a by-law but rather that the enforcement of the tariff policy can only be done on the basis of a by-law. The enforcement of tariff policies that were adopted as council resolutions will therefore be something of the past. The Act requires tariff policies to be implemented on the basis of by-laws that were adopted through the proper legislative procedures.

CREDIT CONTROL AND DEBT COLLECTION

Customer care and management

Section 95 of the Act places the municipality under a duty to establish sound relations with the users of municipal services. It must devise a customer management system and a procedure to assess whether or not consumers and ratepayers are satisfied with the quality of the service and the performance of the

service provider. The municipality must provide accessible pay points and mechanisms to settle accounts or make pre-payments.

Transparency

The Act emphasises openness and transparency around service delivery:

- communities must be informed of the costs involved in delivering the service, the reasons why paying of services is critical and the ways in which moneys are collected;
- accurate accounting must be part of the municipal service delivery strategy; and
- metering of usage must take place through precise and verifiable systems, there must be ways for consumers to query accounts and appeal against inaccurate billing; and
- the municipality must ensure that it has procedures to promptly deal with complaints from consumers and that it monitors its response time and efficiency in dealing with complaints.

DEBT COLLECTION

Collection of all moneys owed to the municipality is compulsory. However, debt collection must take place in accordance with a credit control and debt collection policy, which must be consistent with the municipality's tariff policy (s 96).

Debt collection policy

The policy must provide for procedures and mechanisms for credit control and debt collection. It must provide special rules for the indigent. These rules would follow from the tariff policy and must also comply with any national policy on indigents (s 97(1)(c)). The municipality must set debt collection targets in its policy. These targets must be realistic (taking into account bad debts) and consistent with the estimated income set in the municipal budget.

Interest must be levied on arrears where it is appropriate (s 97(1)(e)).

The Act specifically includes the extension of time for payment of accounts as something that must be provided for (s 97(1)(f)). The policy must also deal with the termination or restriction of services to defaulters and with the tampering with, and damaging of, service delivery infrastructure (s 97(1)(h)).

Different debt collection rules may apply to different categories of users, as long as the differentiation does not amount to unfair discrimination (s 97(2)). The questions referred to above, apply. Similar to the tariff policy, a municipality's debt collection and credit control policy must be given effect to in a by-law (s 98).

RESPONSIBLE AUTHORITIES

With regard to credit control and debt collection, the Act distinguishes between a 'supervisory authority' and an 'implementing authority'.

Supervisory authority

The executive committee or executive mayor is the supervisory authority (s 99(1)). In a 'plenary type' municipality the council as a whole is the supervisory authority. This authority must:

- oversee and monitor the implementation of the policy and any by-laws that were adopted (s 99(1)(a)(i));
- monitor the performance of the municipal manager in this regard (s 99(1)(a)(ii));
- review the policies and by-laws or their implementation when necessary (s 99(b)); and
- report to the council at intervals set by the council (unless council itself acts as supervisory authority, s 99(c)).

Implementing authority

The implementing authority is either the municipal manager or the service provider (s 100). It appears that in the event of a municipal service being delivered through an external mechanism (see pages 3-6), the relevant service provider is the implementing authority. If the municipal service is delivered through an internal mechanism, the municipal manager is the implementing authority in terms of section 100. The implementing

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authority must implement the credit control and debt collection policies and by-laws and ensure that mechanisms are in place to collect revenue (s 100(a)-(b)). A report must be submitted to council at intervals determined by council. The national Minister must prescribe in legislation what the report should deal with (s 100(c)).

OTHER DEBT COLLECTION MEASURES

Access to premises

The occupier of a premises must allow municipal officials access to read meters, install or repair meters as well as to disconnect, stop or restrict the provision of a service. The official must have the necessary authorisation and can only demand access during reasonable hours (s 101). In any event, these provisions are subject to laws and jurisprudence on the right to privacy.

Consolidating accounts

The Act allows for the separate accounts of one person to be consolidated and for an account payment to be credited against any account of that person. The Act also allows for debt collection measures to be implemented in relation to any of a person's arrears. If there is a dispute concerning the specific amount of a municipal fee or tax, the Act does not allow accounts to be consolidated, payments to be credited against another account or debt collection measures to be implemented (s 102).

Agreements with employers

The municipality may enter into an agreement with the employer of a resident who is liable for payment of rates or taxes to deduct outstanding amounts or monthly amounts from his or her salary (s 103(a)). This can only be done with the consent of the employee. However, the municipality may provide special incentives for employees or employers (e.g. discounts) to promote such agreements (s 103(b)).

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