

# The delegation system

## Who does what?

All municipalities must develop a system of delegation in terms of the Municipal Systems Act (the Systems Act). A delegation is when a person or structure delegates a function that originally vested in it to another person or structure to do. The objective of a delegation system is to maximise administrative and operational efficiency and provide adequate checks and balances. An example of a delegation is when the mayor delegates ceremonial duties to the deputy mayor or speaker.

### **Powers that can be delegated**

A municipal council can only delegate powers that originally vested in it. However, there are certain limitations on the powers that can be delegated.

## key points

- The objective of delegations is to maximise administrative and operational efficiency and to provide adequate checks and balances.
- All delegations must be in writing and must be in line with the Constitution, the Structures Act and the Systems Act.
- Delegations may include the power to sub-delegate a delegated power.

### **Limitations**

A municipal council cannot delegate the following powers:

- passing of by-laws, approval of budgets, imposition of rates and other taxes, levies and duties and the raising of loans;
- adoption of an integrated development plan; and
- appointment of a municipal manager.

## To whom?

A municipal council can delegate a power to any of the municipality's political structures, political office bearers, councillors or municipal staff members. However, in terms of the Systems Act certain delegations can only be made to the executive committee (Exco) or the executive mayor. These delegations may be within a policy framework determined by the municipal council.

## Restrictions

The following decisions may only be delegated to Exco or the executive mayor:

- decisions to expropriate immovable property or rights in immovable property; and
- the determination or alteration of the remuneration, benefits and conditions of service of the municipal manager, and of managers directly responsible to the municipal manager.

Furthermore, the council may only delegate the power to make decisions on investments on behalf of the municipality, within a policy framework determined by the Minister of Finance, to Exco, the executive mayor or the chief financial officer.

## Framework for delegations

A system of delegation:

- must not conflict with the Constitution, the Systems Act or the Structures Act;
- must be in writing;
- may include the power to sub-delegate a delegated power.;
- is subject to any limitations, conditions and directions the municipal council may impose;
- does not divest the council of the responsibility of exercising its powers or performing its duty; and
- must be reviewed when a new council is elected or, if it is a district council, elected and appointed.

## Review of a decision in terms of a delegation

The municipal council may review any decision

taken in terms of a delegation and may either confirm, revoke (subject to any rights already accrued to the person) or vary it. It must, however, review a decision taken in terms of a delegation when a quarter of the councillors request it to do so in writing and it may require its Exco or executive mayor to review any decision taken in terms of a delegation.

## Procedural matters

The Systems Act prescribes the procedures below in relation to delegations.

## Referral to delegating authorities

A councillor, committee, political office bearer, or staff member to whom a delegation or sub-delegation was made is allowed not to take a decision in terms of the delegation, but to refer it back to the delegating authority for a decision.

If the delegating authority instructs the committee or person to refer the matter back to them for a decision, it must be done.

## Appeals

The Systems Act makes provision for an appeal on any decision or duty taken in terms of a delegation. The appeal must be in writing and reason for the appeal must be stated. Furthermore, it must be submitted to the municipal manager within 21 days of the date of notification of the decision. The municipal manager must promptly submit the appeal to the relevant appeal authority. An appeal authority must commence an appeal within six weeks after receipt thereof and must give a decision within a reasonable time. When considering an appeal the appealing authority may confirm, vary or revoke a decision, but a variation or revocation may not detract from any rights that may have accrued as a result of the decision.

## Appeal authorities

On decisions taken by staff members, the municipal manager is the appealing authority.

With regard to decisions taken by the municipal manager, Exco or the executive mayor, or

**The appealing authority may confirm, vary or revoke a decision, but may not detract from any rights that may have accrued as a result of the decision.**

cases where there is no Exco or executive mayor, the council is the appeal authority.

On decisions taken by councillors, political structures or political office bearers, the municipal council is the appeal authority. Where there are fewer than 15 members in a council, the appeal authority is a committee of councillors who were not involved in the decision.

## **Duty to report delegating authorities**

All decision taken in terms of a delegation or sub-delegation must be reported to the delegating authority at regular intervals or as required by the delegating authority.

## **Withdrawal, amendment or lapsing of delegation or sub-delegation**

The Systems Act provides that if a delegation or sub-delegation is withdrawn or amended, or if it lapses, things done as a consequence of a decision taken in terms of a delegation or sub-delegation are not invalidated.

## **Review of delegations**

A municipality must review its delegations when a new council is elected or, if it is a district council, when it is elected and appointed. In this case the municipal manager must submit a report to council on the existing delegation and may make recommendations on any changes needed. Where the municipality has an Exco or executive mayor, the municipal manager must submit the report through them to the council.

It is important to note that delegations made in terms of s 32 of the *Municipal Structures Act* are now invalid as this section was repealed by s 121 of the *Municipal Systems Act*. A new amendment to the system of delegation is currently in the pipeline (Local Government Laws Amendment Bill) that allows for delegation by the municipal manager, which must be approved by council in accordance with its delegation system. (See page 12 for more discussion.)

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