



basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

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To: **Heads of Provincial Education Departments**
CC: **Heads of Provincial Institutional Management and Governance**
Chief Financial Officers
District and Circuit Managers
School Principals and School Governing Bodies

CIRCULAR M1 OF 2018

LEGAL INTERPRETATION FOR SECTION 43 (2) OF SASA REGARDING "IS NOT REASONABLY PRACTICABLE"

The Department of Basic Education (DBE) sought a legal interpretation from Senior Counsel regarding Section 43 (2) of the South African Schools Act which reads as follows:

Section 43(2) of the SASA states that, "If the audit referred to in subsection (1) **is not reasonably practicable**, the governing body of a public school must appoint a person to examine and report on the records and financial statements referred to in section 42".

Based on the number of enquires received relating to the interpretation of the phrase "is not reasonably practicable", the Department of Basic Education has developed Circular M1 of 2018 to provide a legal opinion on this matter.

The legal opinion received by Senior Counsel is as follows:

"Reasonable practicality is a phrase that can only be interpreted on the basis of the circumstances of a particular case. For instance, in **Afriforum & another vs University of the Free State**, the Constitutional Court dealt with the interpretation of the phrase 'reasonable practicability' in the context of Section 29 (2) of the Constitution. A contextual approach was applied in terms of which consideration was given to other sub-sections, sections and/or chapters. It was further held that factors to be taken into account in determining reasonable practicability includes feasibility, fairness, and the need for inclusivity and measure to make education progressively available and accessible."

"Reasonable practicability referred to in Section 42 (2) of SASA includes the financial resources of the school, the values of the assets of the school and all other relevant matters. Whether or not it is reasonable practicable to perform an audit through a


registered auditor as contemplated in sub-section (1) will be determined on the basis of facts of each case. What is clear however is that sub-section (2) makes provision for further two options in relation to the inspection of financial statements and records of schools”, which may be followed should all factors considered be against the appointment of a registered auditor”.

“Section 43 of SASA makes provision for three (3) options to a school in relation to its records and annual financial statements, namely to appoint a registered auditor to perform an audit on such records and financial statements, to appoint an Accounting Officer as contemplated in section 60 of the Closed Corporations Act the list of which has been determined by the Companies and Intellectual Property Commission (CIPC) or seek approval from the relevant Member of the Executive Council (MEC) for the appointments if a particular person to examine and report on the records and financial statements of that school. **The last two options can only be exercised if it is not reasonable practicable to appoint a registered auditor to perform an audit in terms of sub-section (1).** Reasonable practicability depends on the circumstances of the school which may differ from one school to another”.

You are kindly requested to bring Circular M1 of 2018 to the attention of all District Directors, Heads of Provincial Institutional Management and Governance, Chief Financial Officers, School Principals and School Governing Bodies.

All enquiries related to this circular should be directed to the contact details indicated above. Circular M1 of 2018 is effective immediately upon the date of signature by the Director-General of the Department of Basic Education.

Yours sincerely



MR HM MWELI

DIRECTOR-GENERAL

DATE: 04/09/2018