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Dear *SALLR* colleague

RE: SLIP AND TRIP ALERT NOTICE 3 OF 2026

This is the third alert notice of those issues that will cause YOU to slip and definitely trip in 2026.

These notifications have been compiled largely on the basis of queries that our call-centre receive, as well as the solutions provided thereto by our fast-tracking team.

Some of these alert notice issues will eventually be incorporated into our mouth-watering annual seminar workbook, as well our delicious and spicy PowerPoint presentation compiled on an annual basis.

The attached notice deals, amongst others, with the following 'prickly pear' issues:

- scrutiny of the roles performed by the governing and legislative bodies of a municipality (the council) and that of the officials who are in charge of the administration of the municipality (the municipal employees led by the municipal manager)
- the extent to which it is permissible for a municipal manager to appoint a service provider on a contingency basis and, in such way, deviate or dispense with official procurement processes
- the extent to which a municipal manager can rely on a defence that, despite the service provider's appointment being unlawful, it is immune against accountability on the basis that the municipality did not suffer any financial losses
- the conclusions that can be drawn from a municipal manager's failure to record the reasons for deviations from the supply chain management policy at the next meeting of the council and to make a note to the annual financial statements
- the consequences when an employer adopts an approach to 'overcharge' an employee (i e bringing a number of charges against the employee in circumstances where the employee is to be found not guilty of some of these)
- the extent to which the test to determine whether or not a dismissal is appropriate, namely, a sensible operational response to risk management, is to be applied respectively in the private and public sectors

We look forward to YOUR being part of the CCMA and *SALLR* continuing professional learning events – to secure YOUR seat, kindly register by completing the attached registration form.

Your hardworking CCMA and *SALLR* teams

FURTHER DETAIL OF THE IDENTIFIED 'PRICKLY PEAR' ISSUES

- What are the four fundamental contextual factors to be taken into account when determining the seriousness or otherwise of misconduct committed?

- What is the significance of the statutory environment within which a municipal manager acts as the head of the administration as well as the accounting officer, thus being in charge of service delivery, financial management, compliance and strategic planning?

- The Local Government: Municipal Finance Management Act 56 of 2003 (MFMA) has as its purpose the securing of sound and sustainable management of the fiscal and financial affairs of municipalities by, *inter alia*, setting norms and standards for the management of revenue and expenditures. In this regard, what is required of an accounting officer of a municipality and, furthermore, what is required of all officials of a municipality exercising financial management responsibilities?

- In terms of s62(1)(f)(iv) of the MFMA, it is the accounting officer who must ensure that a supply chain management (SCM) policy is implemented in accordance with the applicable provisions of the MFM. With reference to, *inter alia*, s118 of the MFMA, to what extent is a municipal manager required to account for, report on and accept responsibilities for financial expenditure when goods and services are procured?

- What are the fundamental differences between the roles performed by the governing and legislative body of a municipality (the council) and that of the officials who are in charge of the administration of the municipality (the municipal employees led by the municipal manager)?

- The Constitution demands that a municipal manager must act both objectively and independently. What is the extent of the further contractual obligations and common law duties on a municipal manager?

- What is the content of 'financial misconduct' that a financial manager might find himself/herself guilty of?

- When do municipal managers commit criminal conduct?

- Under which circumstances will a municipal manager be held personally liable for expenditure?

- Regulation 36 of the Municipal Supply Chain Management Regulations (the regulations) deals with deviations from, and ratification of, minor breaches of procurement processes. In view of the approach adopted in *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, SA Social Security Agency and Others* 2014 (4) SA 179 (CC), what approach is to be adopted in this regard to ensure that such departure is reasonable and justifiable and the process procedurally fair?

- To what extent is it permissible for a municipal manager to appoint a service provider 'on risk' (i e on a contingency basis) and, in such way, deviate or dispense with the official procurement processes?

- The labour court recently took the viewpoint that it is permissible for a municipal manager to appoint a service provider on risk, but such contract must be lawful. In terms of such contract, if a service provider is to draw up a business plan for free (without any expectation of remuneration) and if, on the strength of that business plan, the municipality received funding, and on the basis of such funding the service provider would receive work from the municipality, which would be financed from the funding so received, would such a contract be regarded as lawful?

- To what extent can a municipal manager rely on a defence that, despite the service provider's appointment being unlawful, it is immune against accountability on the basis that the municipality did not suffer any financial losses?

- To what extent can a municipal manager rely on the municipality's own negligence or maladministration or poor planning so as to justify its non-compliance with official procurement processes?

- What conclusions can be drawn from a municipal manager's failure to record the reasons for deviations from the supply chain management policy at the next meeting of the council and make a note to the annual financial statements (in terms of regulation 36(2) of the Municipal Supply Chain Management Regulations?

- Does such obligation to report to the council and make a note to the annual financial statements on the deviation fall away when the municipality does not honour the agreement with the service provider?

- Instead of making the said disclosure to the council and a note to the annual financial statements on the deviation, is a defence for the municipal manager to argue that regulation 36(2) of the regulations and s52(b) of the MFMA has been complied with because, firstly, the mayor was aware of the appointment of the service provider and, secondly, the mayor was repeatedly informed at various meetings of such appointment?

- The MFMA circular number 62 of 2013 regulates variation orders and provides that, from the date of the circular, contracts may be expanded or varied by no more than 20% for construction-related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract. What are the factors to be taken into account to determine whether the municipal manager breached these provisions?

- As opposed to a variation order, when is an amendment to a contract required in terms of s116(3) of the MFMA so applicable to recruitment?

- What is the difference between irregular expenditure, unauthorised expenditure and fruitless and wasteful expenditure, so constituting financial misconduct by a municipal manager?

- What are the consequences when the municipal manager authorises expenditure, but the necessary funds have not yet been received or confirmed?

- What are the consequences when determining the appropriate sanction for dismissal when an employer has ‘overcharged’ an employee (i e brought a number of charges against the employee in circumstances where the employee was found not guilty on some of these)?

- In the scenario where an employee is employed on a fixed-term contract, has completed a substantial portion of such contract and has been found guilty of dishonest conduct, what role should such unexpired term of the fixed contract play when determining the appropriate sanction?

- What are some of the factors to be taken into account to implement progressive disciplinary principles?

- To what extent do the aforesaid issues, so applicable in the local government environment, apply, with the necessary changes, in the private sector?

- In the private sector dismissal is regarded as appropriate when it is a sensible operational response to risk management. To what extent should this approach be applied, with the necessary changes, to the public sector?