

**NATIONAL ASSEMBLY  
QUESTION FOR WRITTEN REPLY  
QUESTION NUMBER: 1290 [NW1658E]**

**1290. Mr C Brink (DA) to ask the Minister of Finance:**

- (1) In light of the judgment of the Eastern Cape High Court in the case of *Blue Nightingale Trading 397 (Pty) Ltd t/a Siyenza Group v Amathole District Municipality (ECD 1681/15)* on the proper interpretation of section 110 of the Municipal Finance Management Act (MFMA), Act 56 of 2003, read together with Regulation 32 of the MFMA: Supply Chain Management Regulations, what measures has he taken, alone or in collaboration with other Ministers, to ensure that municipalities and organs of State doing business with municipalities, comply with the specified provisions when purporting to procure goods and services under a contract secured by another organ of State;
- (2) whether he has been informed of any contracts concluded under these provisions after the Blue Nightingale judgment, that did not or do not rely on the MFMA section 110 as well as Regulation 32 of the MFMA; if so, what are the relevant details in each case?

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**REPLY:**

- 1) It is important to highlight that there was no relief sought against the Minister of Finance or that a finding was made against the Minister of Finance or the Regulations as administered by the Minister of Finance. After the Blue Nightingale judgement, two similar judgements were made against KwaDukuza and Mamusa Municipalities. National Treasury assessed the application of Regulation 32 by various municipalities and deemed it necessary to issue a Circular to elaborate on the principles captured in regulation 32. The Circular is available on the National Treasury website as Circular No.96 under MFMA Circulars. The Circular considered the principles in the Blue Nightingale and KwaDukuza judgements.
- 2) In terms of Circular No. 96, the accounting officer of the participating municipality or municipal entity must utilise the process of reporting as contained in SCM regulation 6, to also include any procurement through SCM regulation 32. The treasuries may request further information in terms of section 74 of the MFMA. The participating accounting officer must also publish the

details of the participation contract award on the municipality or municipal entity's official website in line with section 75 of the MFMA. Therefore, this information is in the public domain, however, there is no specific obligation placed on the municipality or municipal entity to report to the National Treasury or the Minister of Finance with regards to these provisions.