

COJ's Charges for Deposits

By **Chantelle Gladwin-Wood** (Partner)

12 June 2024

INTRODUCTION

HBGSchindlers has received numerous enquiries recently as to the legality of the City of Johannesburg ("the CoJ") charging deposits (or dramatically increased deposits) from consumers by debiting these deposits to the consumers' monthly municipal accounts. Many consumers are unable to pay what can be very significant deposit amounts, debited to their municipal accounts and failure to pay can lead to interest charges, and to termination of services.

In this article (which is an update of our 2014 article on the same topic), we explain what the laws are that govern how and what the COJ can charge for a deposit.

PURPOSE OF A DEPOSIT

In the same way that a landlord would call for a deposit in respect of a lease for damages that a tenant might cause to the property, municipalities (as service providers) are given the power in law to call for deposits in order to secure payment in the event of default by the consumer. On default, the deposit will be applied to any amounts owing to the municipality in reduction of the debtor's liability to the municipality.

WHERE ON MY INVOICE WOULD I FIND THE DETAILS OF MY DEPOSIT (IF I HAVE ONE)?

Computer generated
TAX INVOICE

VAT NO: CITY OF JOHANNESBURG 4780117184 VAT NO: PHUTUP 4780117182
VAT NO: JOHANNESBURG WATER 4270191027 VAT NO: CITY POWER 4710191182

Date	2018/08/03
Statement for	August 2018
Physical Address	
Stand No./Portion	
Township	

Stand Size	Number of Dwellings	Date of Valuation	Portion	Municipal Valuation	Region
2024 m2	1	2018/07/01	E1	Market Value R 1,127,000.00	

Invoice Number: 76003506422 Next Reading Date: 2018/08/20
Client VAT Number: Deposit: R 1,285.38

Account Number:  **PIN CODE:**

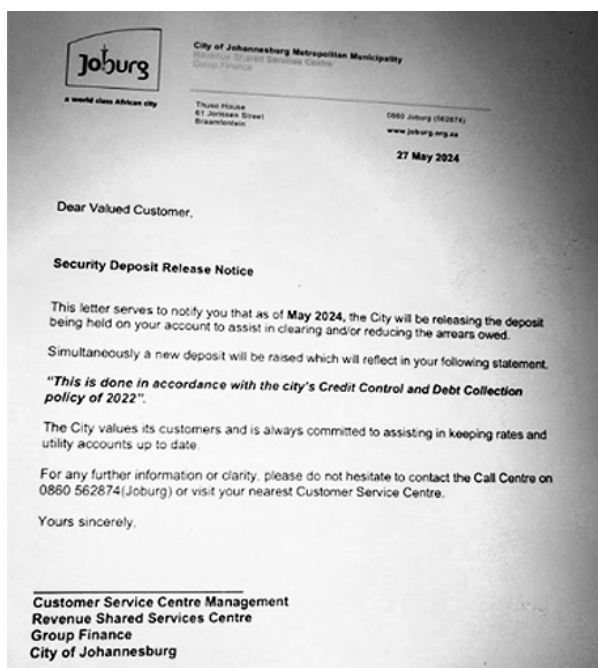
DEPOSITS HELD IN RING FENCED ACCOUNT

These deposits are usually indicated on the invoice as having been separated from the rest of the bill and they are (at least theoretically – what in fact is done with deposit funds is unknown at this stage) allocated to a separate ring fenced account. This means that (ordinarily speaking) amounts that are debited or charged to the account will not be taken from the deposit and payments made into the account will not increase the deposit.

The amount of the deposit will thus remain the same (note that no interest is earned on the deposit) while the outstanding balance on the account will change from month to month depending on charges and payments debited and credited in the ordinary course.

WHAT LAWS AFFECT THE LEGALITY OF HOW MUCH, WHEN AND HOW COJ RAISES A DEPOSIT?

The CoJ's Credit Control and Debt Collection Policy of 2022 ("the Policy") and Credit Control and Debt Collection By-laws in 2005 ("the By-laws") are the most important pieces of legislation that govern this important issue, but there are other subsidiary laws that might come into play depending on the facts of each case. You might need to consult an attorney if you require further information about your particular case.



WHY IS THIS HAPPENING – WHY IS COJ RAISING DEPOSITS?

This appears to be taking place where the consumer's charges for its average consumption of electricity and water over a two month period exceeds the amount of the deposit already held by the CoJ, alternatively where no deposit is held at all.

INTEREST ON DEPOSITS

Many consumers assume that interest will be earned on these deposits held by the CoJ. However, this is not the case. The By-laws expressly provide that no interest is payable on deposits held by the COJ. Many consumers feel that this is grossly unfair because they are not getting the benefit of interest on these amounts, which in effect are held by the CoJ in perpetuity (as long as the property is owned by the consumer concerned).

The question is, what is the CoJ doing with this money – is it using it to fund its operations, is it investing it and earning interest on it to its own benefit, or is it using it to reduce its own debt? All the while the consumer is losing out on interest that it could have been earning on that amount. However, no challenge has been brought to this as of yet and so the position in our law today remains that no interest is payable by CoJ on utility deposits held.

RIGHT TO DEMAND DEPOSITS

In terms of CoJ's Credit Control and Debt Collection Policy, it is entitled to demand a deposit when a new account is opened, up to the maximum of two months' consumption. The amount required must be calculated over an average of the prior three months of consumption data. This is contained in section 8.2 of the Policy.

Where there is a transfer of property taking place and the person opening the account was not living in the property beforehand, the CoJ will have to base its estimate of what amounts the new consumer might use in the future, based on the old owner's consumption.

REVIEW OF DEPOSITS

In the past the COJ was statutorily obligated to review the amounts held as deposits after 6 months based on the consumer's actual consumption, and adjust it upwards or downwards if necessary (although to our knowledge this was seldom, if ever done).

CoJ's by-laws and policies now provide that COJ has the right (but no longer the obligation) to review the amount held at any time, and to request a top up or further deposit, at any time, if the amount held is less than two months' worth of consumption.

WHEN PAYMENT OF DEPOSIT IS DUE

In the case of the CoJ a deposit request is made in one of two ways. Either the CoJ will quote the figure to you when you apply to open an account and in that instance the CoJ might not open the account before your deposit is paid. The City's By-laws, however, contradict its Policy, as to when the deposit required must be paid. In terms of section 3 of the By-law, the deposit must be paid before an account can be opened for the customer. However in terms of section 8 of the Policy, the deposit must be paid within 1 month of transfer of the property. This contradiction may prove tricky for the COJ to enforce.

The second instance in which a deposit payment may be requested is where the CoJ requests a further or a top up deposit. In this instance the CoJ usually does this by indicating that a further amount is required by showing this as a debit line item on the front page of a consumer's municipal statement. This amount then is included as part of the current charges for the month concerned. The law provides that these charges are payable on the due date of the invoice. This means that this kind of top up deposit is due by the due date of the invoice in the same way that the other current charges debited in that invoice are.

EXEMPTIONS IN DEPOSIT REQUIREMENTS

The City's 2022 Policy included certain exemptions for ESP beneficiaries (indigent persons applying for the City's extended service package of benefits), customers receiving pensioner's rebates, and with a market value of their property not exceeding R500 000. Consult section 8 of the Policy for more detail on who is exempted.

DIFFICULTY IN PAYING INCREASED DEPOSIT REQUEST

Deposits payable by ordinary residential consumers may pose short term cash flow constraints and frustration, but the amounts of these deposits ought to not be very large. On the other hand, commercial consumers, sectional title schemes, and multi-unit dwelling owners are facing massive deposit demands, in many cases in the many hundreds of thousands of Rands. In these cases, it may be very difficult for these consumers to be able to make payment of these amounts on the due date of the invoice, especially where they have been given little or no notice.

Sectional Title schemes may need to raise a special levy and to collect the special levy from its owners over several months in order to be able to make payment of a large top up deposit. In situations like this Schindlers would recommend that the consumer concerned approach the CoJ and request that the CoJ allow the consumer to enter into an acknowledgement of debt for payment of the additional deposit requested.

In terms of the acknowledgement of debt the consumer and the CoJ can agree as to how this amount can be paid in installments over an appropriate period of time. The larger the amount, logic dictates, the longer the period that the CoJ should be happy to give the consumer to pay that amount.

GIVING OF A GUARANTEE

The Policy and By-law provide that a deposit equal to the average of 2 months deemed charges must be paid. Section 3 of the By- laws expressly states that a deposit must be paid in cash or by cheque, or that "other acceptable security, as prescribed" may be furnished in its place.

WHAT DOES SECURITY "AS PRESCRIBED" MEAN?

We are not aware that the CoJ has prescribed any form of "acceptable security". In the absence of anything to guide us, the legal position is that the nature of such security should be the same or similar to that required in similar commercial transactions, i.e. an attorney's Irrevocable Letter of Undertaking, or a Bank Guarantee.

ACKNOWLEDGEMENTS OF DEBT FOR DEPOSITS?

Where consumers wish to pay the deposit demanded, but are unable to do so in a single lump sum on short notice, the CoJ ought to accommodate its consumers in this respect. Firstly because it is legally obliged to collect debt and in allowing payment in installments where the consumer simply cannot afford to make payment of the whole amount upfront, it would be fulfilling this function, in the most cost effective and efficient manner possible. Secondly because it would be unreasonable (in the authors' opinion) for the CoJ to act in any other fashion. Where the CoJ does allow a consumer to pay arrears in instalments, the CoJ is limited to giving the consumer a maximum of 60 months (5 years) to pay everything owing.

REFUNDING DEPOSITS AND CHARGING NEW ONES AT THE SAME TIME!

COJ is doing this to many customers as at the date of writing of this article. The notations that appear on the customer's account can be very confusing to the average layperson who is not adept at reading complicated statements.

If you have been affected by this, you might find that the transactions on the front page of your invoice look similar to the below:

Account Number:	[REDACTED]
Previous Account Balance	
Less: Incoming Payment (Last Payment Made 2024/05/07)	
Sub Total	
Current Charges (Excl. VAT)	
VAT @ 15%	
Deposit Request	
Deposit Released	

If you see the phrase "deposit requested" this would be accompanied by a debit (a charge), that increases the amount of money that need to pay to COJ for the invoice. This is COJ calling for or requiring you to pay the deposit.

You may or may not see the COJ simultaneously "releasing" your existing deposit. If COJ does this, it will be accompanied by a credit (an entry that decreases the amount you owe the COJ). This essentially amounts to COJ refunding you to the extent of your existing deposit.

Hypothetically if the COJ releases your existing deposit and requests a deposit in precisely the same amount, you would owe nothing in addition to the COJ (it would not increase your bill at all) and your deposit held would remain precisely the same as before. However, the COJ is asking people for increased – not decreased – deposits, with the result that the request for a new deposit larger than the one previously held, or where no deposit was previously held, is resulting in an increase in the amount owing by the customers affected to the COJ for that invoice period.

Where your deposit is adjusted you should see a change in the section of your invoice above where the deposit held is indicated (the illustration of this part of the bill is on page 2 hereof).

THE COJ HAS INCORRECTLY CALCULATED THE DEPOSIT REQUEST – WHAT DO I DO?

If there is a billing error on your account because the COJ has mistakenly billed you too much for any reason, you can log a query with the City and follow the prescribed dispute resolution mechanisms set out in the City's Policy to dispute the incorrect charge. If you are unable to resolve the dispute with the municipality amicably, you may require expert legal assistance and you may need to approach a court.

WHAT HAPPENS IF I DON'T PAY THE INCREASED DEPOSIT?

The City has the right to terminate your services, after having given appropriate lawful notice.



Chantelle Gladwin-Wood
(Partner)

You can contact the Public Law Department at HBGSchindlers if you require legal assistance with municipal law disputes on public@hbgschindlers.com.