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Ms C Balie
Standing Committee on Auditor General
National Parliament
P O Box 15
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Per E-Mail: cbalie@parliament.gov.za

Dear Ms Balie

COMMENT ON THE DRAFT PUBLIC AUDIT AMENDMENT BILL 2017

1. The Government Gazette No 41386 pertaining to the Draft Public Amendment Bill refers.
2. In general, the Amendment Bill is supported, save for the following comments:
 - 2.1 The proposed amendment of section 5 of the principal act under clause 3 provides as follows:

“(1) The Auditor-General may, at a fee, and without compromising the role of the Auditor – General as an independent auditor –

- (a.) carry out and appropriate investigation or special audit of any institution referred to in section 4(1) or 4(3), if the Auditor – General considers it to be in the public interest or upon the receipt of a complaint or request.”*

The principal act has always empowered the Auditor-General to conduct audit related services, appropriate investigations or special audits for a fee. It should be made clear that where the request comes from the listed auditee that listed auditee will pay the fee. Where the request or complaint comes from a source outside the relevant organ of state the fee should be funded by whomsoever requests the service or from the National Revenue Fund.

- 2.2 The rationale behind the new clause 1B is understood and supported. However the clause should limit itself to ensuring that the recommendations of the Auditor-General are implemented. If the recommendation is that a loss must be recovered the Auditor-General should be empowered to compel implementation of the recommendation. There is significant contestation between what constitutes irregular, fruitless and wasteful expenditure. Both irregular expenditure and unauthorised expenditure may not cause a loss to the organ of state. If there is a loss the quantum of the loss is not always ascertainable through a regular audit and would require other specialist skills.


The nature of the findings and recommendations should be clarified in this clause but the power for the Auditor-General to determine the loss and collect the amount itself is overbroad. If a quantifiable loss has been determined and it is recoverable it should be the Auditor-General's role to compel the organ of state to recover same.

The Auditor-General obtains its mandate from the Constitution of the Republic South Africa, 1996 (Constitution) as a Chapter 9 institution. The basis for such was to create institutions or commissions which provide a monitoring and oversight role. Section 188 of the Constitution clearly defines the functions of the Auditor-General and in recovering the actual loss itself it is potentially going beyond its constitutional mandate.

Section 176 of the *Municipal Finance Management Act 56 of 2003* states that no municipality, or any of its political structures, political office-bearers or officials, no municipal entity or its board of directors or officials and no other organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of any loss or damage resulting from the exercise of that power or the performance of that function in good faith. Should a loss be incurred by a municipality the relevant individuals would not be held liable in their personal capacity, if their decisions had been made in good faith. The Auditor-General will not only have to show a loss but also that the decisions made leading to that loss were made in bad faith.

3. We thank you for the opportunity to comment.

Yours sincerely


JOHAN LEIBBRANDT
CITY MANAGER