

## MEMORANDUM

To: Standing Committee – Auditor General

### COMMENTS ON DRAFT PUBLIC AUDIT AMENDMENT BILL, 2017

#### Matter 1: Page 29 section 1

Definition of **Undesirable audit outcome** means any act or omission identified from an audit performed under this Act that causes, or is likely to cause, a loss of public resources or which resulted in or is likely to result in public resources not being used for its lawful purposes.

#### Comment 1:

Audit outcome normally refers to the overall audit opinion expressed by the auditor after performing the audit process. It does happen that the auditor expresses an unqualified audit opinion with regard to the entity's financial statements, but there were instance/findings where the auditor had identified certain actions or omission by officials, senior managers, accounting officers or public office bearer which caused the municipality financial losses or public resources where not used for its lawful purpose.

For example; Municipality X received unqualified audit opinion for 2015/16 year but based on the Auditor General's management report, the auditor identified instances of fruitless and wasteful expenditure amounting to R200 000 due to interest incurred on late payments of supplier invoices.

The municipality will still receive unqualified audit opinion (which is seen as good audit opinion) on the financial statements as the of fruitless and wasteful expenditure amount to R200 000 is lower than the audit materially of R1 million. This matter will be reported by the AGSA under non-compliance to legislation. The officials responsible has caused the municipality to incur additional expense of interest for not ensuring that payment of invoices takes place timeously.

We therefore suggest that the wording Undesirable audit **finding(s)** be used instead of outcome **Undesirable audit outcome'**

#### Matter 2: page 32 subsection (1A)

(1A) The Auditor-General may refer any undesirable audit outcome to an appropriate body for investigation, and the relevant body must keep the Auditor-General informed of progress and the final outcome of the investigation.

**Comments 2:**

There are a number of institutions that are authorised to conduct investigations, we recommend that the appropriate bodies which the Auditor General can refer investigations to be listed as part of the Bill.

It is also important to take into account that the Municipal Financial Misconduct Regulations requires Council or Accounting Officer to refer investigations to the disciplinary board established in terms of these regulations.

**Matter 3.1: Page 32, Subsection (1B)**

(a) The Auditor-General must recover from the responsible accounting officer, accounting officers, accounting authority or accounting authorities, as the case may be, any loss resulting from unauthorised, irregular, fruitless and wasteful expenditure, as defined in any applicable legislation relevant to the auditee, and any other losses suffered by the auditee, including—

- (i) money due to the State, which has not been collected; or
- (ii) money which has been improperly paid,

if, in his or her opinion, a satisfactory explanation for the failure to recover the loss is not furnished, within the **prescribed period**, by the relevant accounting officer or accounting authority.

(b) In the absence of a satisfactory explanation contemplated in paragraph (a), the Auditor-General must issue a certificate in the prescribed form to the relevant accounting officer or accounting authority specifying the amount due and the reason for the recovery.

**Comment 3.1:** Subsection (1B) requires the Auditor General to recover losses from the Accounting Officer or the Accounting Authority, it is not clear why the AGSA has to recover financial loss from the Accounting Officer, especially if we take into account that in some instances the act or the omission would have not been caused by the Accounting Officer or Accounting Authority.

Recovery of money/financial loss from the responsible person is dealt with under Section 32 (2) A of the MFMA, which requires the municipality to recover unauthorised, irregular or fruitless and wasteful expenditure from a person liable for that expenditures after investigations conducted in terms of the financial misconduct regulations.

The connection between the two sections stated above (MFMA-section 32 and Public Audit Act, Subsection (1B)) need to be well-defined so that there is no confusion in terms of responsibility for investigations and recovery.

### **Matter 3.2 – Page 32, Subsection (1B) (a)**

“if, in his or her opinion, a satisfactory explanation for the failure to recover the loss is not furnished, within the **prescribed period**”

### **Comments 3.2**

**Prescribed period** should be defined in this Bill, as other regulations such as the MFMA or PFMA does not prescribe the period required for Accounting Officer or Accounting Authority to ensure that money is recovered from those responsible for causing the financial losses.

### **Comment 4**

When this Bill become effective and the AGSA is authorised to recover money as currently stated in the draft Bill, it is important that guidance be provided to municipalities in terms how the process will unfold as they might be challenges arising from implementation of this Bill and implementation of requirements of the MSA, MFMA and Municipal Financial Misconduct Regulations by Council and different committees.

It is also important that to ensure that there is no duplication in terms of investigation and recovery process as this will result in a situation where state resources are used for the similar investigation/recovery process performed by different parties.

### **Matter 5: Page 37, Subsection 5**

(c) by the insertion in subsection (1) after paragraph (c) of the following paragraphs:

"(cA) any matters referred for investigation in accordance with section 5(1A);

(cB) the certificates issued in terms of section 5(1B)(b);

(cC) the details of the monies recovered and monies deposited into the National Revenue Fund and the Provincial Revenue Fund in terms of section 5(1B)(e); and”.

### **Comment 5:**

The Bill does not address how the money will be paid into the Municipality, Department/Public Institution bank account from the National Revenue Fund or the Provincial Revenue Fund.

As the financial loss was suffered by the municipality, it is important that money recovered be paid back to the institution affected.

**Matter 6. Page 33, section 5 (b) (1A)**

(c) The amount specified on the certificate referred to in paragraph (b), subject to the provisions of paragraph (g), constitutes a debt due to the State.

**Comment 6:**

The section above indicates that the money is due to state, does this mean the National treasury will recognise this amount in its financial statement as debtors.

There might be double counting as the municipality might have also recognised the same amount as recoverable from the official or office bearer who caused financial loss in its financial statements.

**In this case State (should be defined)**

**7. Overall comments**

**7.1 Interpretation of Irregularities**

Currently minor transgression of the process or exceptions are treated the same way as if no process was followed at all. The extent of the transgressions differs and it seems there is a strong need to also re-define irregularities in the MFMA, before implementation of some subsections in this Bill.

For example, the municipality obtained quotations three times for the same product, bitumen which is normally used for Asphalt. In total, the municipality spend R500, 000 because the plant was shut down. Normally, the municipality spend about R20m on the same product. The AGSA simply added up the three quotations which were properly advertised and concluded the municipality should have gone on tender and concluded there was splitting of tender.

Also, where reasons for deviating are disputed, amounts are simply classified as irregular expenditure. It is clear that there is a need to define procurement irregularities first and agree on what is reportable and what is not.

**7.2 Independence**

An audit must be performed independent of the management that compile the Financial Statements and Performance information. If the Auditor is part of the financial statement preparation process by making decisions on recoverability, they are no longer independent as they will be part of the management decision and compilation process. Independence would be compromised leading to undesirable outcomes.