

Cindy-Joy Balie

From: Sekgetho,Andries (BE) <AndriesS@agsa.co.za>
Sent: 23 February 2018 02:18 PM
To: Cindy-Joy Balie
Cc: Bhengu,Walter (SM)
Subject: FW: Inputs PAA amendments

Importance: High

Dear Standing Committee on the Auditor-General (SCoAG),

Please take note on the following comments, inputs and questions regarding the proposed amendments to the PAA. The Red portion is the question, input or comment and the immediate portions following in Black are from the actual amendments document or the PAA for ease of reference of the question, input or comment preceding it, where applicable.

1. *Will the debtor only be limited to the AO/AA, as in terms of PFMA chapter 10, liability in terms of financial misconduct transgressions is not only limited to these but also official delegated by them as well?*
(d) by the insertion after the definition of "constitutional institution" of the following definitions:
" 'debtor' means the amount owed by the debtor as specified in the certificate issued by the Auditor-General in terms of section 5(1B)(b);
'debtor' means the —
(a) accounting officer; or
(b) accounting authority or individual members of the accounting authority, identified in the certificate issued by the Auditor-General in terms of section 5(1B)(b) as liable for the debt either individually or jointly and severally, as the case may be;"
2. *Can spending be lawful but however still not be for the intended purpose? I am aware that the AGSA is then likely then to probably report under unauthorised expenditure, but would suggest that the word "intended" before "lawful purpose" be considered to be included? Or is the thought process that where it would not have been spent for intended purposes and therefore unauthorised, it becomes unlawful in terms of PFMA?*
(g) by the substitution for the full stop at the end of the definition of "supreme audit institution" of a semi colon and the insertion after that definition of the following definitions:
" 'this Act' includes the regulations;
'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 purpose.
3. *The section under the PAA itself could be elaborated upon, as the AGSA encountered an entity "Redisa" under the DEA portfolio, which had no enabling legislation and no actual allocation, but a gazette and some plan signed by the minister to collect a levy from tyre manufactures and recycle old tyres (set up recycle plants etc with money collected). When the entity went "rogue" the minister "indicated" he/she had no recourse and thus could not determine whether objectives were met and money spent for intended purpose. AGSA could also not audit as it was not listed. This would apply for special purpose vehicles not listed such as the "Green fund" as well. Therefore the definition of scope under the PAA section 3(b) can be elaborated with another roman numeral to include such entities based on criteria such as where they also execute a function on behalf of government? This would therefore also allow the increased scope of referral powers to include such entities????*
Section 4 of the principal Act is hereby amended—
(a) by the insertion after subsection (3) of the following subsection:
"(3A) Despite the provisions of any other law, the discretion of the Auditor-General as contemplated in subsection (3) applies to a public entity contemplated in subsection (3)(a) and any other institution contemplated in subsection (3)(b) that meets prescribed criteria."; and
 Referring to PAA:
 (3) The AuditorGeneral may audit and report on the accounts, financial statements and financial management of—

- (a) any public entity listed in the Public Finance Management Act; and
- (b) any other institution not mentioned in subsection (1) and which is—
 - (i) funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or
 - (ii) authorised in terms of any legislation to receive money for a public purpose.

4. On pages 9 and 10 of the document, same would apply as comment number 1. Where this has been clearly delegated, how does the AGSA deal with this as the proposed amendments only refer to the AO and AA? Or alternatively the amendments may need to explicitly state that, where these responsibilities were delegated, that the AO/AA must first recover from such an official and if not done within a prescribed time, the recovery will then be re-directed to the AO/AA?
5. Should it not state “immediately if such is available” as when read in conjunction with the immediate preceding sections, they may have money available for recovery now and then wait 180 days and then the AGSA would need to engage in the follow up processes when not settled after the 180 day period? Same for the sections immediately following this example below.
The Auditor- General may —
(i) where the debtor is entitled to a payment, other than remuneration, from an organ of state or an institution funded by public money, subject to any written agreement between the Auditor-General and the debtor, recover the debt by way of a claim against such organ of state or institution;
6. Consider including “if debt not settled within the prescribed requirements”?
iii) institute civil proceedings to recover the debt from the debtor.

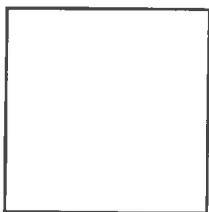
The rest looks ok and more on operations.

Kind regards,
Andries Sekgetho CA(SA)

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