Cindy-Joy Balie

From: Le Roux, Linda (BE) <leroux@agsa.co.za>
Sent: 18 February 2018 04:34 PM
To: Cindy-Joy Balie
Cc: Bezuidenhout, Marissa (BE); Ngaka,Nhlanhla (DBE)
Subject: Comments on Public audit amendment bill, 2017

Dear Sir/Madam

My comments on the amendments to the Public audit act is provided below for your consideration

Referral process (amendment 1)

- The term "undesirable audit outcome" could create confusion as it is a broad term for any type of audit outcome – anything less than a clean audit is "undesirable". It should be termed in a manner that it will be easily understood and applied.
- It is proposed that it be termed "Referable irregularity" which is similar to the well-known and established "reportable irregularities" that registered auditors in the private sector are required to report to their regulator (IRBA) for further investigations. Alternatively the term "irregularities" can be used which is also commonly understood.
- The following changes to the definition of undesirable audit outcomes is proposed: "means any act or omission committed by any persons responsible for the management of any institution referred to in section 4(1) or (3) ~~identified from an audit performed under this Act~~ that causes, or is likely to cause, a material loss or the misuse of public resources ~~or which resulted in or is likely to result in public resources not being used for its lawful purpose~~.".
- Reasons for changes:
  - The public expectation for the AGSA to unearth and address all fraud will be heightened with this amendment – but it will be an unreal expectation as the standard audit processes will not identify all the irregularities at an institution for referral. It will be more prudent to already in the act give a sense of the "materiality considerations" that will be applied before referral will take place. The changes proposed is that it should be clear that it will be material losses and committed by those in management
  - "Identified from an audit" could limit AGSA to refer matters not identified during or as a result of the audit. There could be challenges if losses or misuse is identified through whistleblowing or reports from others such as internal audit or an investigations unit (which management did not deal with as they should have).
  - The term "misuse" could be interpreted more broadly than "for its lawful purpose" which implies there must be some law that was breached.

Recovery process (amendment 2)

- The new section (1B) seems to make it the AGSA responsibility to recover all unauthorised, irregular and fruitless and wasteful expenditure as well as any other losses if not done so by accounting officers or authorities. In my understanding the intention was for the AGSA to only recover losses as determined by the investigation based on the referral made by the AGSA. The legislation will need to be amended to make it very clear.
- There also seem to be a disconnect between what is being referred (effectively any loss or misuse of any public resource) and what is described in the new section (1B) which is now limiting it to a loss to that specific auditee and not to the state in general. The actions of one institution can lead to the loss at another institution.
- The section is too specific and seems limiting if reference is now made to unauthorised, irregular and fruitless and wasteful expenditure and collections and payments. It would be better if this level of detail can be kept to regulations, which will allow for more time to consider all the different scenarios. Also note that only departments and municipalities have unauthorised expenditure and the type of matters that will be referred will never lead to unauthorised expenditure.
- It is unclear who will be liable for recovery if it is an accounting authority – e.g. who will pay if it is a board of directors? In this regard similar wording as per the companies act might be more appropriate.
- The issuing of certificates by the AGSA and the subsequent recovery processes will place strain on the resources of the AGSA as well as create significant pressures and pushbacks during the annual audits. Institutions such as those the referrals will be made to (e.g. the public protector, hawks, asset forfeiture unit) already has the processes and resources in place to do this work and do not have a relationship with the auditees – it would be preferable if it is dealt with by them as part of the investigations performed. If the recovery process is to be given to the AGSA at least the consideration should be given to allocate the recovery of the debt from the specific persons to a more suitable institution.

Section 20 (amendment 6)

- The intention of the amendments to section 20(2) is to provide the AGSA with more flexibility in terms of the audits that needs to be performed on an annual basis and even provide for some level of rotation. The changes proposed below is to enable such flexibility further:
  - Section 20(2)(a) – the last part referring to applicable financial reporting framework and legislation should be removed to enable AGSA to only issue findings on the financial statements (e.g. in the case of an audit where there is significant limitations and where the audit should not be performed to the full extent).
  - After section (a) and (b) the words "and/ or" should be included to allow for rotation. It means the financial statements will be audited annually but the audits of performance reports and compliance can be left out or rotated.

Kind regards,
Linda le Roux

Business Executive: Audit Research and Development • Auditor-General of South Africa
Tel: +27(0)12 422 9838 • Mobile: 082 465 0652 • Fax: +27(0)12 422 9822 • Email: leroux@agsa.co.za
Personal Assistant: Zelia Vermaak
Tel: +27(0)12 422 9711 • Mobile: 082 465 3766 • Email: zvermaak@agsa.co.za

Auditing to build public confidence

Please consider the environment before printing this email