

WRITTEN SUBMISSION OF COMMENTS ON THE DRAFT PUBLIC AUDIT AMENDMENT BILL, 2017

In response to the invitation to comment on the Draft Public Audit Amendment Bill, 2017, we hereby submit our comments:

• Item 1 – Refers to S1 (d)

S1 (d) by the insertion after the definition of “constitutional institution” of the following definitions:

“ **‘debt’** 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;”

Comment:

The definition needs to be revisited as the person causing the debt is not necessarily the accounting officer. There may be other role players in the process

• Item 2 – Section 1 (g)

S1 (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."

Comment:

The definition is vague and subjective. It should be aligned to S32 of the Municipal Finance Management Act (MFMA). It is suggested that the definition be linked to the existing guidance on irregular, fruitless, wasteful and unauthorized expenditure for both the MFMA and PFMA

Item 3 – Section 2(b)

(b) by the substitution for subsection (4) of the following subsection:

"(4) In the event of any conflict between **[a provision of]** this section and any other legislation, **[existing when this section takes effect, the provision of]** this section prevails."

Comment:

This proposed amendment is in conflict with S3 (2) of the MFMA, which states that the MFMA takes precedence over any other legislation which regulates any aspect of the fiscal financial affairs of municipalities or municipal entities.

In addition this is contradictory to S 3 of the Public Finance Management Act (PFMA) in respect of the affairs of Provincial and National departments.

Furthermore, this provision appears to be in conflict with S153 of the Constitution of the Republic of South Africa, which empowers the municipality to structure and manage its own administration and budgeting and planning processes to give priority to the basic needs of the community.

Although it is acknowledged that S188 of the Constitution provides for additional powers and functions to the Auditor General, as may be prescribed by National Legislation, it is our considered view that when these powers are granted, they should be in line with S188 of the Constitution, which specially indicates that the AG must audit and report on the accounts, financial statements and financial management. By engaging in the recovery processes the AG will be seen to be interfering in the administration of government and an independent body will be required to give an independent view of the process, which was not the intention of S188 (4) of the constitution.

Item 4: Section 3(b) (1B)

(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.

Comment:

The proposed amendment is problematic based on the previous comments.

S3 (b) (1B) (a) is in conflict with S32 of the MFMA as it is taking away powers of council as per S32 (2) of the MFMA.

Furthermore this section is in conflict with S96 of the Municipal Systems Act, which indicates that the municipality must collect all money due and payable to it.

In addition the last paragraph of S3 (b) (1B) (a) refers to the relevant accounting officer or accounting authority although S32 of the MFMA assigns this power to Council to recover.

Based on the above it is our considered view that this whole new section S3 (b) (1B) should be removed as it is not appropriate taking into account the main objective of the AG, which is to audit and report on the accounts and financial Statements. If this new section had given powers to the AG to review processes and recommend remedial action it will not be seen to be in conflict with their mandate.

Item 5: Section 9

9. Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The **[Deputy]** Auditor-General must—

(a) establish an audit committee contemplated in section 43(3)(b)(ii); and

(b) appoint the members of the audit committee **[in consultation with the Auditor-General]**."

Comment:

In line with best practice the audit committee is appointed to provide oversight on financial management, risk and performance. Therefore we are of the view that it is not appropriate for the Deputy AG to appoint, as the deputy is responsible for administration in terms of the Public Audit Act. Therefore the power to appoint the Audit Committee, should not be delegated further than the AG as this is likely to cause conflict.