



AUDITOR - GENERAL  
SOUTH AFRICA

Honourable V Smith  
Chairperson  
Standing Committee on the Auditor-General  
Parliament  
PO Box 15  
Cape Town  
8000

13 April 2018

Reference: Public Audit Amendment Bill, 2018/03

Dear Honourable Smith

**Public Audit Amendment Bill, 2018 – submission of additional information.**

I have followed with interest the progress the Standing Committee on the Auditor-General (“the Committee”) has made since our 14 March 2018 engagement on the Public Audit Amendment Bill, 2018 (“the Bill”).

I submit herewith a position paper that deals with the nature of evidence obtained during the course of an audit and how such evidence compares to the evidence obtained during an investigation. The paper explains and further clarifies the three-tier model proposed to the Committee during our 14 March 2018 meeting.

I trust that the position paper will assist the Committee in its final deliberations and refinements to the Bill.

Yours sincerely

  
13/04/2018  
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terms of the audit standards. The legislated audit deadlines and limitations on audit fees also prevent us from doing such an in-depth investigation.

### *Investigation*

A forensic investigation implies an organised, detailed and critical examination of the books of accounts and transaction records (both past and present) of an entity, conducted by a team of experts to determine the facts behind a particular situation or to uncover the truth. An investigation provides factual evidence about the specific matter being investigated, including who is responsible, whether losses were incurred, whether fraud was committed, etc. The scope is determined based on the circumstances around the specific matter being investigated and there is no legislated timeframe to perform, as opposed to an audit where statutory timelines put immense pressure to conclude on the process. Investigators have more scope and time to gather more conclusive evidence to strengthen their case.

The main objective of an investigation is to gather extensive, factual and conclusive evidence so the matter can hold up in court or in the relevant forum. Investigators gather evidence with a particular end result in mind. Such end result may come in the form of a finding, ruling, order or conviction in internal disciplinary processes, disciplinary processes conducted by regulators or professional bodies, civil proceedings or criminal prosecution. The evidence gathered for presentation in a disciplinary forum or in a civil court must be sufficient to prove the allegation or claim on a balance of probability. This is called the burden of proof. The burden of proof is even stricter in criminal proceedings, where a charge must be proven beyond reasonable doubt.

The evidence collected during the audit process is thereof insufficient to discharge of the burden of proof, be that on a balance of probability or beyond reasonable doubt.

#### **4. The evidence required for material irregularities**

The proposed amendments define the material irregularity as any non-compliance with legislation, fraud or theft or a breach of fiduciary duty identified during an audit performed under this Act that causes or is likely to cause a material financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public.

The intention is that material irregularities should surface through the normal audits performed on an annual basis or through performance audits. Some of the elements of a material irregularity can be determined through these audits, but the majority requires an investigation to conclude on the matter. The table below provides an overview of the elements that can be identified during an audit.

<i>"Any non-compliance with legislation, fraud or theft or a breach of fiduciary duty identified during an audit."</i>	
Non-compliance	An audit can determine whether there was non-compliance with legislation. Often the auditee also acknowledges such non-compliance through disclosure of irregular expenditure. However, the audit will not always determine who caused the non-compliance and should be held liable for the transgression.
Fraud or theft	<p>An audit can only determine whether:</p> <ul style="list-style-type: none"> <li>• There are indicators/ factors that make the auditor believe that fraud or theft may be taking place or may have taken place.</li> <li>• An auditee has sufficient evidence of fraud or theft occurring, but is not dealing with it appropriately - e.g. reporting in terms of PRECCA.</li> </ul> <p>Only a forensic investigation can find evidence of fraud or theft sufficient for it to be presented to court. Only a court can determine that fraud or theft occurred and who is responsible for it.</p>
Fiduciary duty	<p>Some breaches of fiduciary duty can be identified through a normal audit as part of the compliance audit testing – e.g. getting involved in decision-making at the auditee that poses a real or potential conflict of interest or the failure to declare such conflict of interest.</p> <p>Other breaches require more in depth investigation – e.g. acting not in the best interests of the institution or an accounting officer failed to take reasonable steps to prevent</p>



