

National Treasury Instruction No. 4 of 2022/2023 PFMA Compliance and Reporting Framework

PRESENTED BY: National
Treasury

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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SAFE**

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THE BRIEF

Update the Standing Committee on Public Accounts on National Treasury Instruction No. 4 of 2022/2023 regarding the exemption of State-Owned Entities (SOEs) from reporting irregular expenditure

RESPONSE TO THE BRIEF

PART A

The presentation outlines the following categories of the legislation requirements –

- Public Finance Management Act (PFMA),
- Treasury Regulations and
- Instruction No. 4 of 2022/2023
- Conclusion on the exemption for SOEs from reporting on irregular expenditure

PART B

Unpacking the purpose of Instruction No. 4 of 2022/2023 and its related processes

PART C

Current Challenges and Legislative Reforms

PART A

Unpacking the legislative requirements in terms of the PFMA, Treasury Regulations and Instruction No. 4 of 2022/2023

Requirements of the PFMA

Responsibilities of accounting officers and authorities in relation to unauthorised, irregular and fruitless and wasteful expenditure

- Preventative controls – section 38(1)(c)(ii) and section 51(1)(b)(ii)
- Detective controls – section 38(1)(g) and internal policy for entities
- Consequence management – section 38(1)(h) and section 51(e)
- Reporting (disclosure requirements) – section 40(3)(b) and section 55(2)(b)
- Financial misconduct – section 81 and section 83

Requirements of the PFMA - continued

Sections 40(3)(b) and 55(2)(b) of the Public Finance Management Act (PFMA), (Act No. 1 of 1999) provides for the annual report and financial statements of institutions subject to the PFMA to include particulars of any -

- Unauthorised expenditure (in the case of departments),
- Irregular expenditure; and
- Fruitless and wasteful expenditure; and
- Any criminal or disciplinary steps taken as a result of such losses and UIF&WE
- Any material losses recovered; or any material losses written off; and
- Any other matters that may be prescribed

**UIF&WE that
occurred during
the year**

Requirements of the Treasury Regulations

- **Accounting officers are required in terms of treasury regulation 9.1.5** to disclose as a note to the annual financial statements amounts of unauthorised, irregular and fruitless and wasteful expenditure;
- **Accounting authorities are required in terms of treasury regulation 28.2.1** to disclose as a note to the annual financial statements any material losses through criminal conduct and any irregular and fruitless and wasteful expenditure;

Purpose of Instruction No. 4 of 2022/2023 - PFMA Compliance & Reporting Framework

The purpose of National Treasury Instruction No. 4 of 2022/2023 is to prescribe in terms of section 76 of the PFMA –

- (a) principles and compliance reporting requirements;
 - (b) application, implementation and reporting of unauthorised expenditure, irregular expenditure, and fruitless and wasteful expenditure;
 - (c) reporting on payments of suppliers' invoices; and
 - (d) reporting on supply chain management information related to– (i) procurement by other means; and (ii) contract variations and expansions
- Documentation and disclosure of information related to regulatory and legal requirements in the annual report; and
 - Secure transparency and accountability on processes related to UIF&WE

Authority – Applicability – effective date of Instruction No. 4 of 2022/2023

Authority

- Instruction No. 4 is issued in terms of section 76(1)(b), (e) and (f), (2)(e) and (4)(a) and (c) of the PFMA

Applicability

- Instruction No. 4 applies to all institutions subject to the PFMA

Effective Date

- The effective date of the instruction is January 2023 and as from the 2022/2023 financial year the annual report will include a dedicated section on compliance as required by Instruction No. 4

Conclusion - exemption for SOEs from reporting on irregular expenditure

- **Instruction No. 4 of 2022/2023 does not exempt SOEs from reporting irregular expenditure**
- Instruction No. 4 of 2022/2023 aligns the reporting requirements captured in sections 40 and 55 of the PFMA for institutions to report on unauthorised, irregular and fruitless and wasteful expenditure that occurred during the financial year;
- It must further be noted exemptions from reporting on irregular expenditure can only be considered under section 92 of the PFMA

PART B

Unpacking the objectives and principles of irregular expenditure in terms of the National Treasury Instruction No. 4 of 2022/2023

Objectives of Instruction No. 4 Of 2022/2023

Provide for standards to be applied and reporting process to be followed by:

- (a) accounting officers of departments, trading entities and constitutional institutional when dealing with unauthorised, irregular and fruitless and wasteful expenditure and the reporting thereof;
- (b) accounting authorities of public entities when dealing with irregular and fruitless and wasteful expenditure and the reporting thereof;
- (c) accounting officers and accounting authorities when reporting on matters related to supply chain management processes; and
- (d) accounting officers and accounting authorities when reporting on matters related to late payment of suppliers **(this part will not be dealt with in this presentation)**.

Discovery and recognition of irregular expenditure

Discovery

An employee who becomes aware or suspect the occurrence of unauthorised, irregular or fruitless and wasteful expenditure must, in terms of Treasury Regulation 9.1.2 immediately/ internal policies (in a case of entities), in writing, report such expenditure to the accounting officer/authority or a duly delegated official

Recognition (irregular expenditure)

- (a) Expenditure incurred in contravention of, or not in accordance with legislation (PFMA, treasury regulations, instructions and any other applicable legislation); and
- (b) Expenditure recognised in the statement of financial performance or liability recognised in the statement of financial position (where expenditure is not reflected in the statement of financial performance) in a case of institutions that are required to comply with Standards of Generally Recognised Accounting Practice (GRAP) or the International Financial Reporting Standards (IFRS).

Reporting of irregular expenditure in the Annual Financial Statements

- Irregular expenditure when incurred and confirmed-(after the process of assessment) is disclosed in the annual financial statements (AFS)
- Amounts disclosed in the AFS relates to irregular expenditure incurred in the current financial year (including expenditure paid on multi-year contracts for that year), with a one financial year comparative (to accord with accounting principles)
- Irregular expenditure for the previous financial year (comparative amounts) must be recognised in the period in which they occurred as follows –
 - (a) irregular expenditure incurred and confirmed in the previous financial year;
 - (b) irregular expenditure that was under assessment in the previous financial year and confirmed in the current financial year; and
 - (c) irregular expenditure that was not discovered in the previous financial year and identified and confirmed in the current financial year.
 - (d) irregular expenditure payments relating to multi-year contracts that was not condoned or addressed.

Reporting of irregular expenditure in the Annual Report

Additional information relating to irregular expenditure under –

- assessment,
- determination,
- investigation,
- Reconciliation of historical irregular expenditure; and
- Other important narratives such as consequence management and inter-institutional arrangements

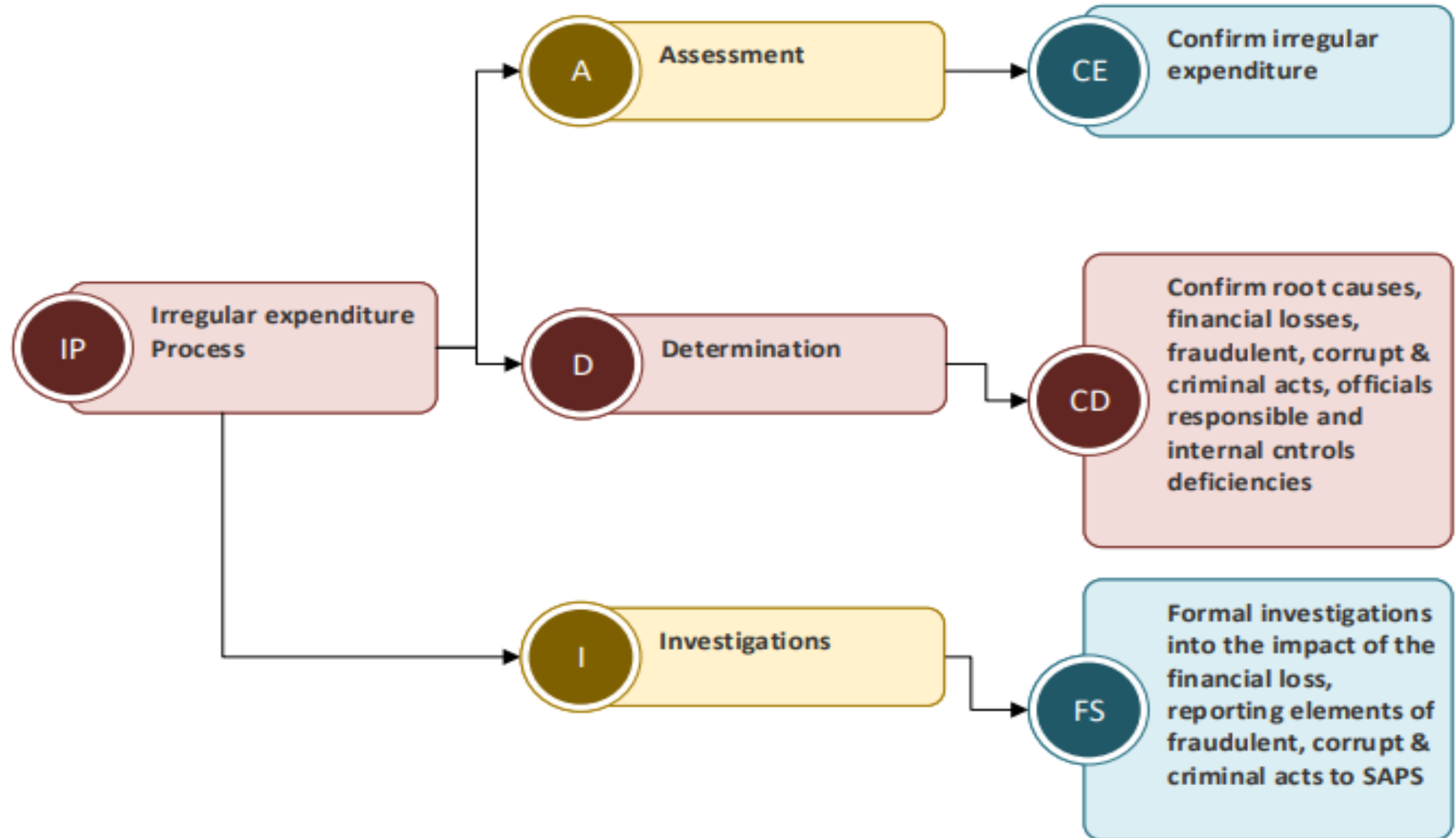
Must be recorded in the annual report in accordance with the prescribed reporting requirements



Annual report template

Components	Content	Reference to legislation
General Information	General information about the entity, including a foreword by the Minister/MEC, report by the AO/AA, strategic overview, legislative mandate, organisation structure	
Performance Information	Achievements against targets set in strategic plans and annual performance plans.	S40(3)(a) & TR 5.2.4 – departments S55(2)(a) & TR 28.2.2 – public entities
Governance	Discussion on governance arrangements and reports by internal oversight bodies (e.g. audit committee)	TR 3.1.12 & TR 3.1.13 – departments TR 27.1.7 – public entities
Human Resource Information	Status of HR in the entity including performance management, wellness programmes and resource plans/goals	
Financial Information	Annual financial statements	S40(1)(b) & TR 18.2 – departments
Compliance information	PFMA compliance and reporting	S40(3)(b) and 55(2)(b)

Requirements of Instruction No. 4 of 2022/2023 – process



Condonation process

- Confirmation that a determination test was conducted;
- Findings and recommendations of the loss control function or another relevant function that conducted the determination test;
- Confirmation that the matter is free of fraudulent, corrupt or other criminal conduct;
- If the matter has fraudulent, corrupt or other criminal conduct, confirmation of a case number showing that a case was opened with the South African Police Services;
- Confirmation that no loss was incurred and that value for money was achieved;
- Confirmation that disciplinary action was taken or in the process of being taken against the responsible official or officials; and
- Confirmation of remedial actions taken or being taken by the accounting officer/authority to prevent the recurrence of irregular expenditure in similar circumstances.

Consequence management

- Treasury Regulations 33.3.1 requires the accounting authority to submit to the executive authority, the relevant treasury and the Auditor-General on an annual basis a schedule of
 - (a) the outcome of any disciplinary hearings and/or criminal charges,
 - (b) the names and ranks of employees involved; and
 - (c) the sanctions and any further actions taken against these employees,
- This information is reported in annual reports of entities and does not provide for detailed information of those employees that have resigned prior to investigations or disciplinary processes being finalised to avoid being disciplined;
- The National Treasury together with the DPSA, DPME and DCoG has put together a centralized register to track employees that resign before investigations or disciplinary action being taken;
- The central register will provide specific information that will amongst others assist organs of state to strengthen their administrative capacity for vetting of new and existing employees in the public service and enable for detective and preventative mechanisms.

PART C

Current challenges and Legislative Reforms

Governance, operational and accountability Challenges

- Onerous reporting requirements for SOEs – in addition to IFRS requirements, compliance to PFMA and JSE debt listing requirements
- Impact of audit qualifications on the ability of SOEs to raise capital in the open market
- SOEs have experienced some challenges especially in policy and mandate misalignments, inefficient operations, and failure to keep pace with changes in the industry, governance failings, weak balance sheets and poor financial performance, inability of SOEs to refinance the existing debt which led to liquidity risk, inadequate mechanisms to enforce accountability.
- Growing number of SOEs with a recurring qualification audit opinions relating to completeness of IFWE reported in the annual financial statements (AFS).
- SOEs struggles with systems and capacity to uncover and report all irregular expenditure incurred (past and present) majority which relates to legacy issues
- The recurring qualified audit opinions affect how SOEs compete in the open market

Challenges - Definition of irregular and fruitless and wasteful expenditure

- The **broader reforms** to improve the reporting of unauthorised, irregular and fruitless and wasteful expenditure in government
- Budget speech, February 2022, Minister of Finance:
“We must differentiate between corruption and minor transgressions of the rules of policy prescripts that are audited as irregular expenditure. The National Treasury is engaging with the Auditor-General to continue to ensure transparent disclosure of minor transgressions, but outside the financial audit process.”
- Response of President Ramaphosa to state capture and corruption (6.1.8):
“The National Treasury and the Auditor-General of South Africa (AGSA) are working together to review the usefulness of the concept of irregular expenditure, and to focus on identifying corrupt or suspicious expenditure, or expenditure made in bad faith. This is part of an effort to address the Commission’s recommendation cited in paragraph 5.3.2.3.”

Legislative Reforms

- Going back to the original spirit of the PFMA:
 - **LET MANAGERS MANAGE BUT THEY MUST BE ACCOUNTABLE**
- Strengthen REPORTING AND CONSEQUENCE MANAGEMENT FRAMEWORK FOR SOEs
- SOE responsible for developing and implementing a sound internal control environment including risk management - Internal control systems to identify non-compliance, fraud, corruption and criminal intent (detective and preventative measures)
 - Why did the audit committees and internal controls fail 2010-2018?
- Reduction in the number of Instructions made applicable to SOEs

Legislative Reforms continued

Combined assurance model

- Internal audit to conduct risk based audit approach in SOEs (sound preventative controls)
- Intensify risk management systems to identify areas of fraud, corruption or criminal intent (sound detective controls)
- Audit committee to interrogate these reports and demand management responses how issues of this nature are being addressed

Location of the documents related to irregular expenditure

- (a) [National Treasury Instruction No 4 of 2022 2023 PFMA Compliance reporting 3 January 2023.pdf](#)
- (b) [PFMA COMPLIANCE AND REPORTING FRAMEWORK \(treasury.gov.za\)](#)
- (c) [GUIDELINE ON QUARTERLY REPORTS \(treasury.gov.za\)](#)
- (d) [Annual Report Guideline and Specimen - Default \(treasury.gov.za\)](#)

END

Thank you