Process for dealing with Irregular Expenditure and role clarification

Presenter: Wayne McComans: National Treasury: Office of the Accountant-General
13 November 2018
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Legal Framework

• In terms of Section 62 of the MFMA the Accounting Officer of a municipality is responsible for managing the financial administration of a municipality and **MUST**
  – *Take all reasonable steps to ensure that the resources of the municipality are used effectively, efficiently and economically and*
  – *Take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented*

• In terms of section 4(2)(a) of the MSA; the council has a duty to use the resources of the municipality in the best interest of the local community.

  Therefore municipalities need to adopt policies and processes to prevent or curb unauthorised, irregular, fruitless and wasteful expenditure.
Irregular Expenditure

What is Irregular Expenditure?

- Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the MFMA, and which has not been condoned in terms of section 170; or
- Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act; or
- Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers; or
- Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law dance with, a requirement of the Public Office-Bearers.
The irregular expenditure increased by 75% in 2016/17. R16,8 billion was incurred in previous financial years.
61% of municipal council did not conduct the required investigation in terms of section 32 of the MFMA.
Root Causes

• Procurement (contributes between 80 and 90% of irregular expenditure)
  – Municipalities failing to follow SCM processes when procuring goods and services.
  – Municipalities failing to comply with SCM Regulation 32 requirements when “piggybacking” on contracts secured by another organ of state.
  – Poor planning resulting in municipalities utilising SCM Regulation 36.
  – Failure to put internal controls in place to detect non-compliance before award of a contract i.e. no probity audits undertaken to detect non compliance during
• Extension of expired contracts and failure to follow section 116(3) processes when extending contracts.
• Failure to comply with section 33 before entering into a contract of more than 3 years.
• No audit evidence of SCM process followed in procuring goods and service.
• Persons appointed in acting positions for more than 3 months without permission from MEC of Local Government.
• Remuneration of political office-bearers otherwise than in accordance with the Public Office-Bearers Act.
• Lack of consequence management for non-compliance with the MFMA.
Procedure for addressing Irregular Expenditure

Irregular expenditure discovered by Accounting Officer & the Auditor-General

Was Expenditure written off by the Municipal Council in terms of section 32(2) of MFMA?

Written off

Accounting Officer to report in terms of section 32(4) of the MFMA

Municipal Council to refer expenditure to Council Committee for investigation in terms of section 32(2)(b) of MFMA read with regulation 74 of the MBRR

If Council Committee recommends as irrecoverable, Council certifies as irrecoverable and write-off expenditure in terms of section 32(2)(b) of MFMA

Recover expenditure from person liable and Accounting Officer to take Disciplinary and criminal steps

Recover debt?

Yes

Disclose in AFS and update Irregular Expenditure Register

Expenditure to be recovered and should remain as an entry in the register until recovered

Institute Debt Collection proceedings

Recover debt

Debt recoverable

Yes

Debt irrecoverable

No

Write off debt

Consider Financial Misconduct charges
NT and Council roles in addressing Unauthorised, Irregular, Fruitless and Wasteful Expenditure

Council’s role

- Section 32 of the MFMA
- Authorise a council committee to investigate recoverability of expenditure and liability of officials responsible for expenditure
- Council only ratifies, regularises, authorises Unauthorised, Irregular, Fruitless and Wasteful Expenditure (after investigation by council committee)

National Treasury’s role

- Section 170 of the MFMA
- Authorizes NT to condone the non-compliance which led to the irregular expenditure being incurred
- Only NT may condone non-compliance with MFMA or its subordinate legislation on good grounds shown
Consequence Management

- Chapter 15 of the MFMA provides the legal framework for financial misconduct and financial offences;
- Similarly MSA have Code of Conduct for officials and councillors, prescribed processes to be followed when officials or councillors breach the code;
- The MFMA builds on the principles of good governance, transparency, effective, efficient and economical use of public funds and public accountability;
- Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings promulgated on 31 May 2014 with implementation date being 01 July 2014.
- Purpose of regulation is to set out processes and procedures to deal effectively and expeditiously with allegations of financial misconduct;
- Regulations apply to all officials and political office bearers in municipalities and municipal entities.
- MFMA Circular 76 issued on 19 August 2015 to provide more information of the Regulations.
Establishment of Disciplinary Boards

- **EC:** 7 municipalities have established DC boards: Blue Crane Route; Mbizana; Matatiele; Umzivumbu, Sarah Baartman, Chris Hani and Nelson Mandela.
- **FS:** 4 municipalities have established DC boards: Letsemeng; Dihlabeng; Nketoana and Thabo Mofutsanyana.
- **GP:** 5 municipalities have established DC boards: City of Tshwane; CoJ; Midvaal; Emfuleni and West Rand.
- **KZN:** 5 municipalities have established DC boards: Ubuhlebezwe; uMhlathuze; Jozini; Alfred Duma and eThekwini.
- **LP:** 11 municipalities have established DC boards: Elias Motsoaledi; Sekhukhune; Thulamela; Musina; Capricorn; Lepelle-Nkumpi; Blouberg; Molemole; Lephalalele; Bela Bela and Ba-Phalaborwa.
- **MP:** 7 municipalities have established DC boards: Chief Albert Luthuli; Enhlanzeni; Govan Mbeki; Steve Tshwete; City of Mbombela and Nkangala.
- **NW:** 10 municipalities have established DC boards: Ngaka Modiri Molema; Ramotshere Moiloa; Madibeng; Dr Ruth Segomotsi; Naledi; Greater Taung; Maquassi Hills; Rustenburg and Morelete.
Establishment of Disciplinary Boards

- NC: 24 municipalities have established DC boards: Richtersveld, Nama Khoi, Kamiesberg, Hantam; Karoo Hoogland; Khai-Ma; Namakwa; Frances Baard; Ga Segonyana; Gamagara; Emthanjeni; Ubuntu; Thembelihle; Renosterberg; Kareeberg; Dikgatlong; Umsobomvu; John Taolo Gaetsewe; Siyancuma; Pixley ka Seme; ZF Mgcawu; Kai Garib; Dawid Kruiper; !Kheis; Tsantsabane; Kgatelopele; Siyathemba; Magareng and Phokwane.

- WC: 10 municipalities have established DC boards: Drakenstein, Stellenbosch, Breede Valley, Eden, Mossel Bay, Overstrand, City of Cape Town, Witzenberg, Bitou, Swartland, Knysna, George, Prince Albert, Cederberg and Cape Winelands.

- 83 (32%) Municipalities have established DC boards in line with the Financial Misconduct Regulations.
Recommendation

- MM Forum note content of presentation
- MM Forum note process for dealing with Irregular Expenditure
- MM forum note the role clarification with regard to Irregular Expenditure
- MM Forum note the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings including the national compliance status with regard to the establishment of the Disciplinary Boards as the structure through which the regulation has to be implemented
- MM Forum agrees that Accounting Officers to expedite processes in dealing with high levels of Irregular Expenditure
- MM Forum agrees that Accounting Officers will expedite the establishment of Disciplinary Boards in terms of the Regulations referred to above.
Ngiyabonga
Thank You