

IRREGULAR EXPENDITURE AND CONSEQUENCE MANAGEMENT

WHAT ELEMENTS REQUIRE CONSEQUENCE MANAGEMENT?

- **Unauthorised Expenditure** ☹️
- **Irregular Expenditure**
- **Fruitless and wasteful
Expenditure** ☹️
- **SCM abuse** ☹️

Focus on Irregular Expenditure and related Consequence Management

1. What do we deal with?
2. Definition in law
3. Principles – the WHAT
4. Processes – the HOW
5. Way forward

MFMA – R 17bn
89% = SCM

LEGISLATIVE FRAMEWORK –

Irregular expenditure

s1 – Definitions

s32 – Management and treatment

s62 – AO responsibilities

s78 – Officials responsibilities

s125 - AFS

s171 – Financial misconduct

s173-174 – Criminal proceedings

**SCM TR 36 & 38(1)(b) – ratification &
investigate and act re SCM abuse**

MFMA circular 68 - Guidelines

LEGISLATIVE FRAMEWORK – Financial Misconduct

PRESCRIPT	PROVISION
MFMA s 171(4)	<ul style="list-style-type: none"> • Investigate allegation. • Institute disciplinary proceedings as per s 67 of the MSA.
MFMA s 173	<ul style="list-style-type: none"> • Deals with relevant offences.
MFMA s 174	<ul style="list-style-type: none"> • Deals with relevant penalties that may be imposed.
MFMA s 175	<ul style="list-style-type: none"> • Provides for the promulgation of regulations with regards to the management of financial misconduct, procedures and criminal proceedings.
Fin Misconduct Regulations, 2014	Promulgated under Government Gazette Notice 37699, no. R 430 on 30 May 2014.
MFMA circular 76 of 19 October 2015	Dealing with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings

TEST for IRREGULAR EXPENDITURE

E: Expenditure incurred

- In contravention of **OR** not in accordance with a requirement of **this Act*** and which has not been condoned in terms of section 170;
- In contravention of **OR** not in accordance with a requirement of **the MSA or public office-bearers Act; OR**
- In contravention of **OR** not in accordance with a requirement of **the SCM Policy of a municipality or By-law and which has not been condoned by such Policy or By-law.**

TEST for IRREGULAR EXPENDITURE

- 1. Expenditure incurred = transaction**
- 2. Contravention of law**
- 3. Not condoned**

PRINCIPLES for le –

1. EXPENDITURE INCURRED

1. **There must be a transaction**
2. **Event that triggers le = non-compliance**
(i.e. financial misconduct/disciplinary action)
3. **Conundrum = Trigger vs payment within 30-days – who is liable?**
4. **Examples:**
 - (i) **Courts: Cash Paymaster judgement; Gijima judgement & Asla judgement**
 - (ii) **AGSA: contract irregularly procured**

PRINCIPLES for le –

2. CONTRAVENTION OF LAW

- **MFMA**
 - **MSA**
 - **POBA**
 - **SCM POLICY**
-
- *Delegations, PPPFA, CIDBA and Regulations are included*
 - *Practice Notes & Circulars not included as per MFMA section 168 – MUST be adopted by Council*

PRINCIPLES for le – 3 – NOT CONDONED

3 Mechanisms:

- (i) MFMA condone, section 170 NT**
- (ii) SCM Policy condone**
- (iii) Ratification**

- i. NT condonation ☹️ - still maintain evidence as part of consequence management PoE**
- ii. SCM Policy condonation – require process aligned to law/NT guidelines**

PRINCIPLES for le – 3 – NOT CONDONED

Ratification (MFMA circular 68) – AO to consider merits of each case:

- i. Minor (nature, circumstances, intent, financial implication = loss/benefit)
- ii. Technical (Section 217 test)
- iii. SCMP
- iv. Linked to delegation
- v. Ratify action, not condone expenditure
- vi. Must still register and section 32-committee to consider recoverability
- vii. Report as per SCM TR 36(2)

***NOTE: Nature of breach NOT monetary value
guide action***

PRINCIPLES for le – LIABILITY IN LAW

Liability determination = LAW:

- (i) Act says: “....Deliberately or negligently made, permit or authorise...”
- (ii) Circular 68 says: “ ... Did not act in good faith... **THERE WAS A LOSS**”
- (iii) Admin law says: “forfeiture of statecover-liability”

Liability determination = HOW:

- (i) Reasonable man test
- (ii) Through ‘investigation process’ and ‘labour process’

Liability determination = WHO:

- (i) MFMA section 32,
- (ii) After investigation process, and
- (iii) On recommendation of Disciplinary Board

SOP – LEGAL FRAMEWORK – Liability in Law differs for role-players

WHO - Liability in Law:

(i) Officials:

- **Forfeited state cover**
- **Financial Misconduct vs Disciplinary process**

(ii) Executive Authority

(iii) Suppliers:

- **NT:**
 - **PPPFA - Restricted suppliers**
 - **Corrupt Activities Act – tender defaulters**
 - **BBBEE - Bid rigging & Fronting**
 - **Competition Act - collusive tendering**
- **Municipality:**
 - **Abuse of SCM System**
 - **Breach of contract**



CONSEQUENCE MANAGEMENT

**AGSA and MFMA circular 68
– Municipality to adopt
processes/mechanisms**

CONSEQUENCE MANAGEMENT MAIN PROCESSES

1. **Discovery:**
 - Notification process
 - Classification
 - Validation
2. **Council Reporting**
3. **Investigation & Liability in Law**
4. **Treatment & Recovery**
5. **Reporting**
6. **Monitoring & Evaluation**

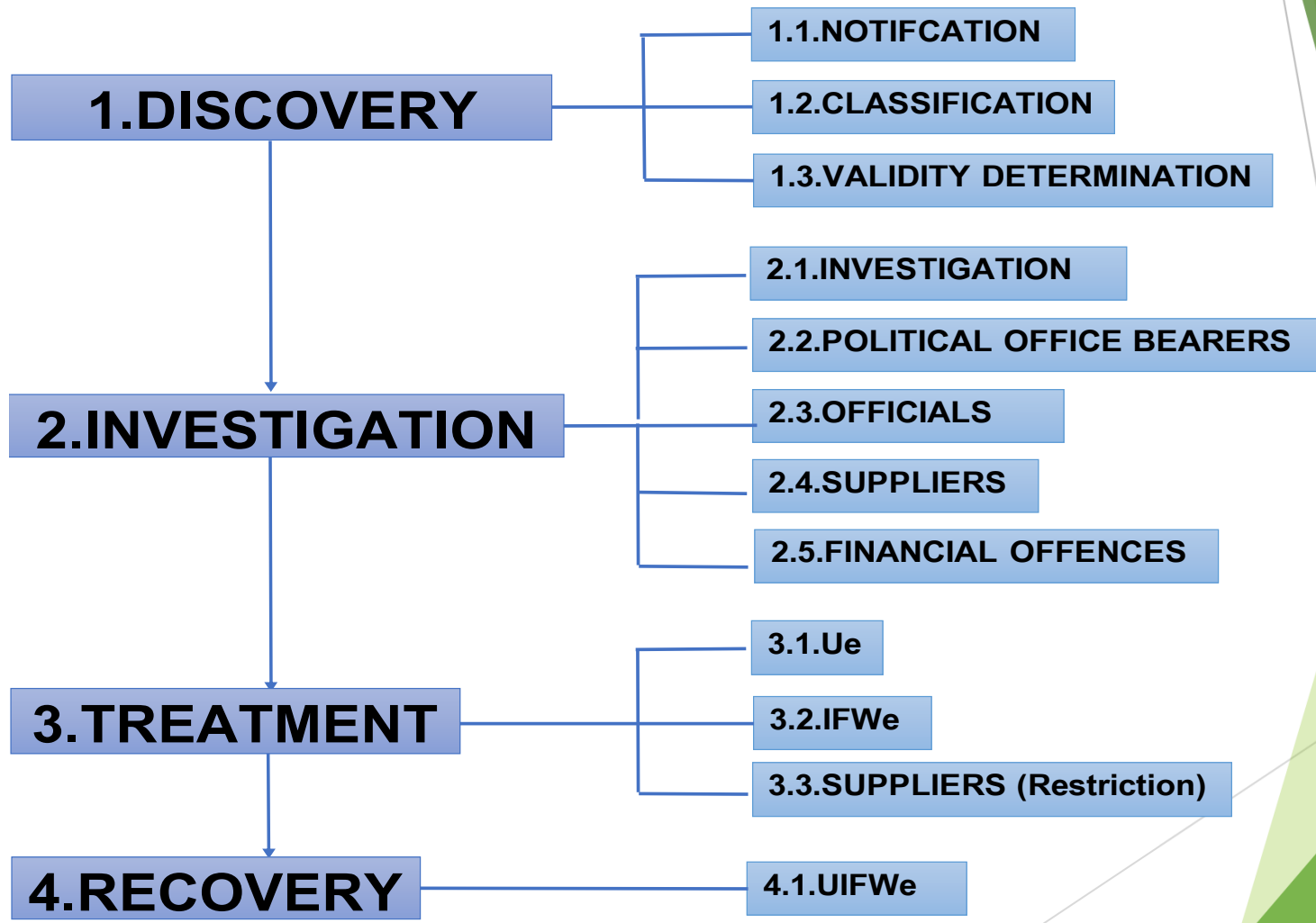
ROLEPLAYERS

- **‘CFO Office’** – to advise on incidents and whether such activity resulted in an irregular expenditure, manage resultant investigations, maintain a matrix/spreadsheet of such incidences to monitor trends and institute improvement measures and to treat any le activity (recovery), as well as to address any identified control weaknesses and training requirements
- **‘Assurance providers’** – to advise on an incidents
- **‘SCM Unit practitioners’** – to advise on incidents of SCM System abuse
- **‘FI/SAPS’** – to determine whether an irregular expenditure and/or SCM System abuse activity resulted in financial offence, fraud or corruption.
- **‘MFMA section 32 Council Committee/MPAC’** – to monitor and advise on the management of le matters and to advise on the recovery or not (condonation) of identified and confirmed le & Appeals from restricted suppliers.

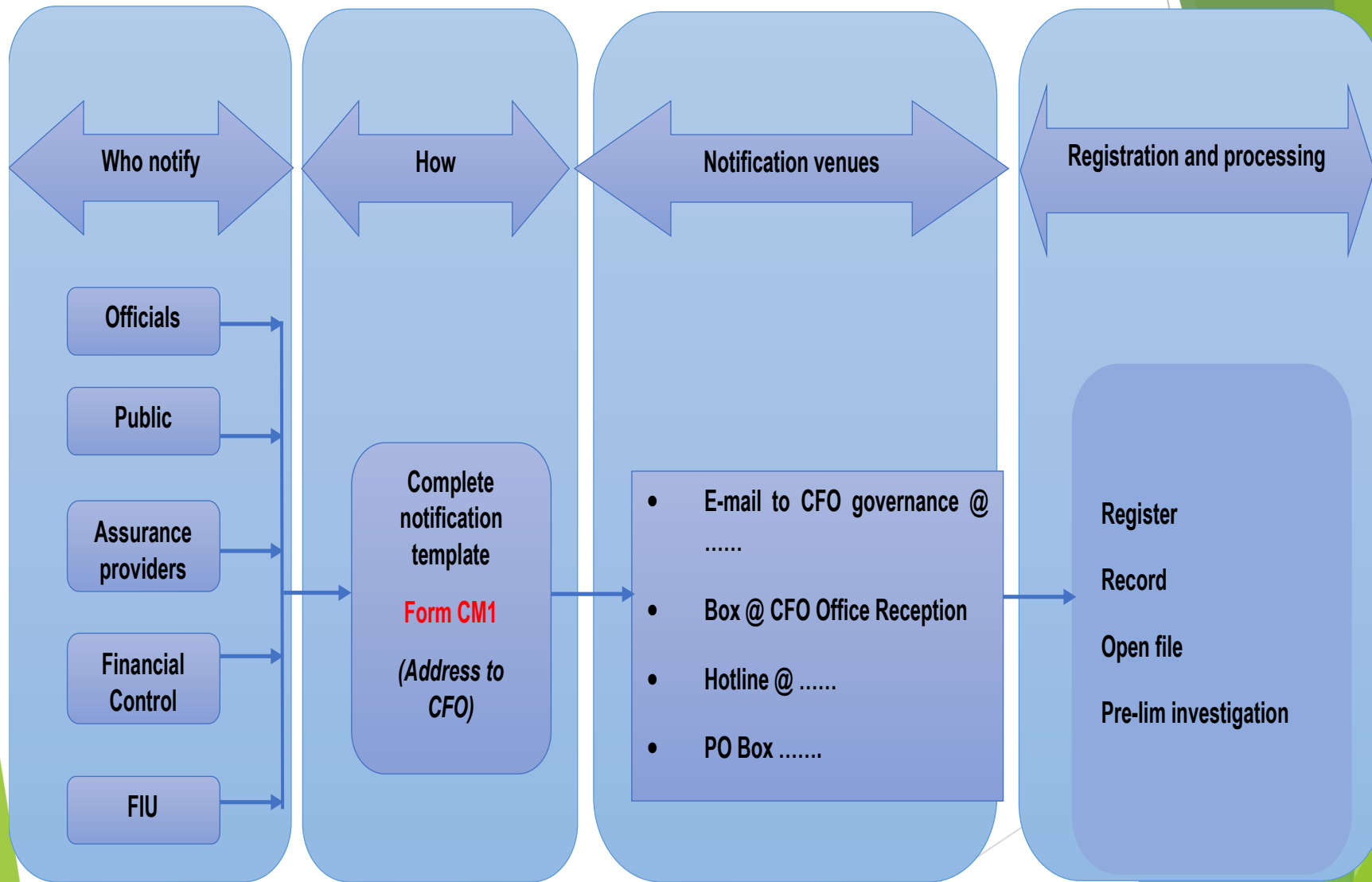
ROLEPLAYERS

- **‘Legal Services’** – to provide legal support on questions of law, the management of resultant legal actions, assist with the determination of liability in law and the management of restriction of suppliers
- **“Audit Committee”** – to monitor the impact and control weaknesses of le on the effective financial management of the municipality.
- **‘HRM’** – to assist with financial misconduct, determination of liability in law and resultant disciplinary actions
- **‘Disciplinary Board’** – to confirm validity, support with investigation and advise on outcome recommendations
- **‘AO’** - ratify minor errors, reject bids and report as prescribed.
- **‘Council’** – approve recommendations (le) and disciplinary actions.

CONSEQUENCE MANAGEMENT: MAIN PROCESSES



DISCOVERY: NOTIFICATION



DISCOVERY: CLASSIFICATION

1. DISCOVERY: 1.2. CLASSIFICATION

1.2.1. Classification Test

1.2.1.1. Unauthorised expenditure

Expenditure incurred by a municipality otherwise than in budget and includes:
 Overspending of the total amount appropriated in the municipality's approved budget;
 Overspending of the total amount appropriated for a vote in the approved budget;
 Expenditure from a vote unrelated to the department or functional area covered by the vote;
 Expenditure of money appropriated for a specific purpose, otherwise than that specific purpose;
 Spending of an allocation referred to in paragraph (ii), (iii) or (iv) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or
 A grant by the municipality otherwise than in accordance with the MFMA'

1.2.1.2. Fraud

'Fraud' means introducing a course of action by deceit or other dishonest conduct, involving acts or omissions of the making of false statements, orally or in writing, with the object of obtaining money or other benefit from, or of evading a liability to, the municipality. This definition includes monetary gain and any benefit that could be gained, including intangibles, such as information. Fraud causes actual or holds potential financial loss to any person or entity immediately before or after the activity.

1.2.1.3. Irregular expenditure

MFMA s1: Expenditure incurred:
 In contravention of OR not in accordance with a requirement of this Act and which has not been condoned in terms of section 170;
 In contravention of OR not in accordance with a requirement of the MSA or public office-bearers Act;
 OR
 In contravention of OR not in accordance with a requirement of the SCM Policy of a municipality or By-law and which has not been condoned by such Policy or By-law.

1.2.1.4. Fruitless & Wasteful expenditure

MFMA s 1: Expenditure incurred:
 in Vain AND Would have been avoided had reasonable care been exercised

1.2.1.5. SCM abuse

- Fronting
- Collusion
- Influenced tender processes
- Misrepresentation
- Omitting information
- Fraud
- Extortion
- Falsely obtaining information
- Restrictive practices
- Non-performance

1.2.2. Materiality Test

1.2.2.1. Minor

SCM TR 36; MFMA circular 68 of 2013:

- the specific nature of the breach: is it simply technical in nature, not impacting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process?
- the circumstance surrounding the breach: are the circumstances justifiable or, at least, excusable?
- the intent of those responsible for the breach: were they acting in good faith?
- the financial implication as a result of the breach: what was the extent of the loss or benefit?

1.2.2.2. Material

Does not fit in classification of minor.

DISCOVERY: VALIDATION

1. DISCOVERY: 1.3. VALIDATION

1.3.1. Confirm Classification

1.3.1.1. No case

1.3.1.2. Fraud

See Figure 1.2.1.2

1.3.1.3. Irregular expenditure

See Figure 1.2.1.3

1.3.1.4. Fruitless & Wasteful expenditure

See Figure 1.2.1.4

1.3.1.5. Unauthorised expenditure

See Figure 1.2.1.1

1.3.1.6. SCM abuse

See Figure 1.2.1.5

1.3.2. Confirm Materiality

1.3.2.1. Minor = condone

See Figure 1.2.2.1

1.3.2.2. Material

See Figure 1.2.3.2.

1.3.3. Mandate further action, considering

1.3.1. Investigation

See Figures 2.1 - 2.5

1.3.2. Control weakness

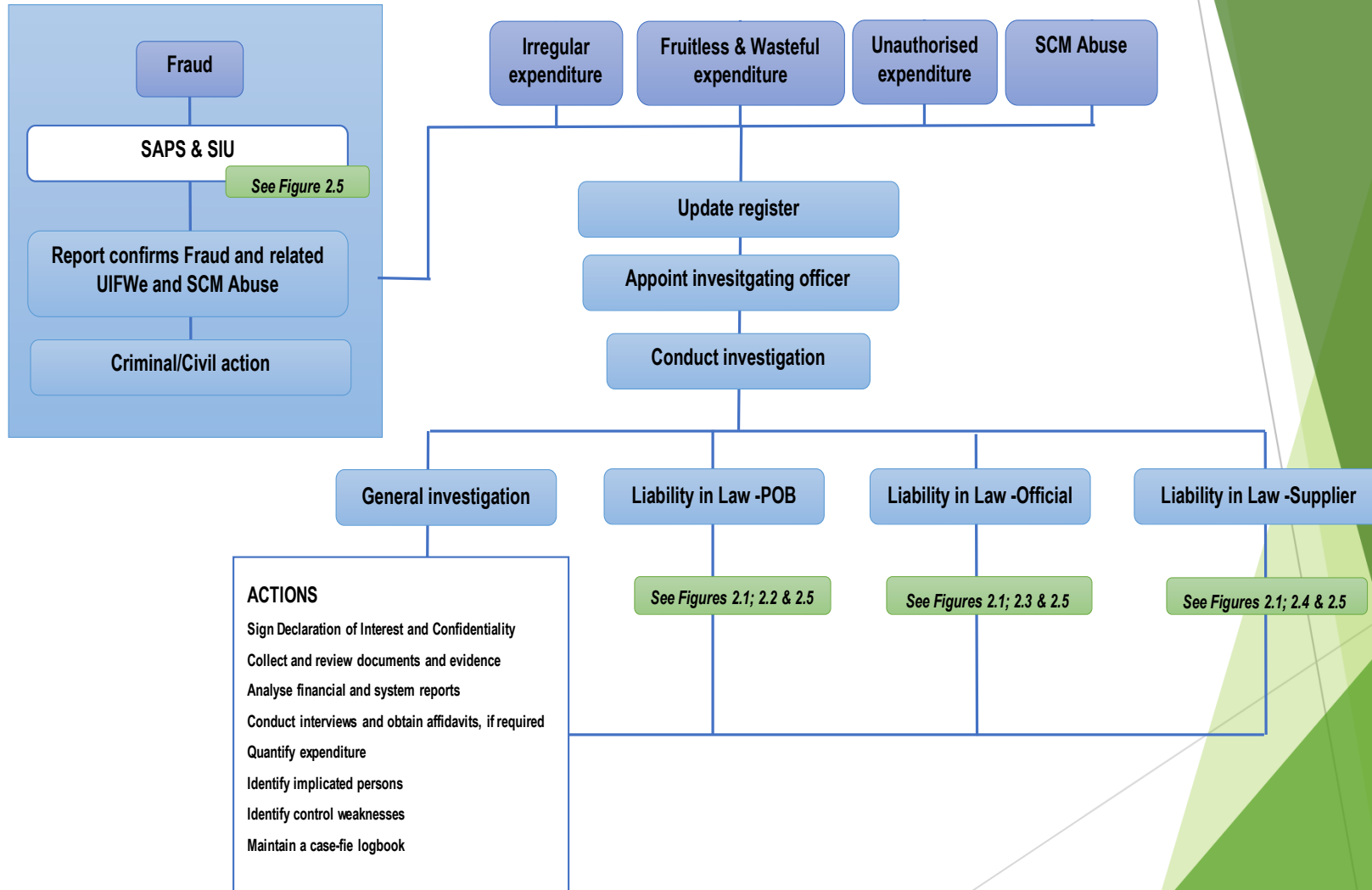
1.3.3. Determination of Liability in Law

See Figures 2.2 - 2.5

1.3.4. Prescribed Reporting

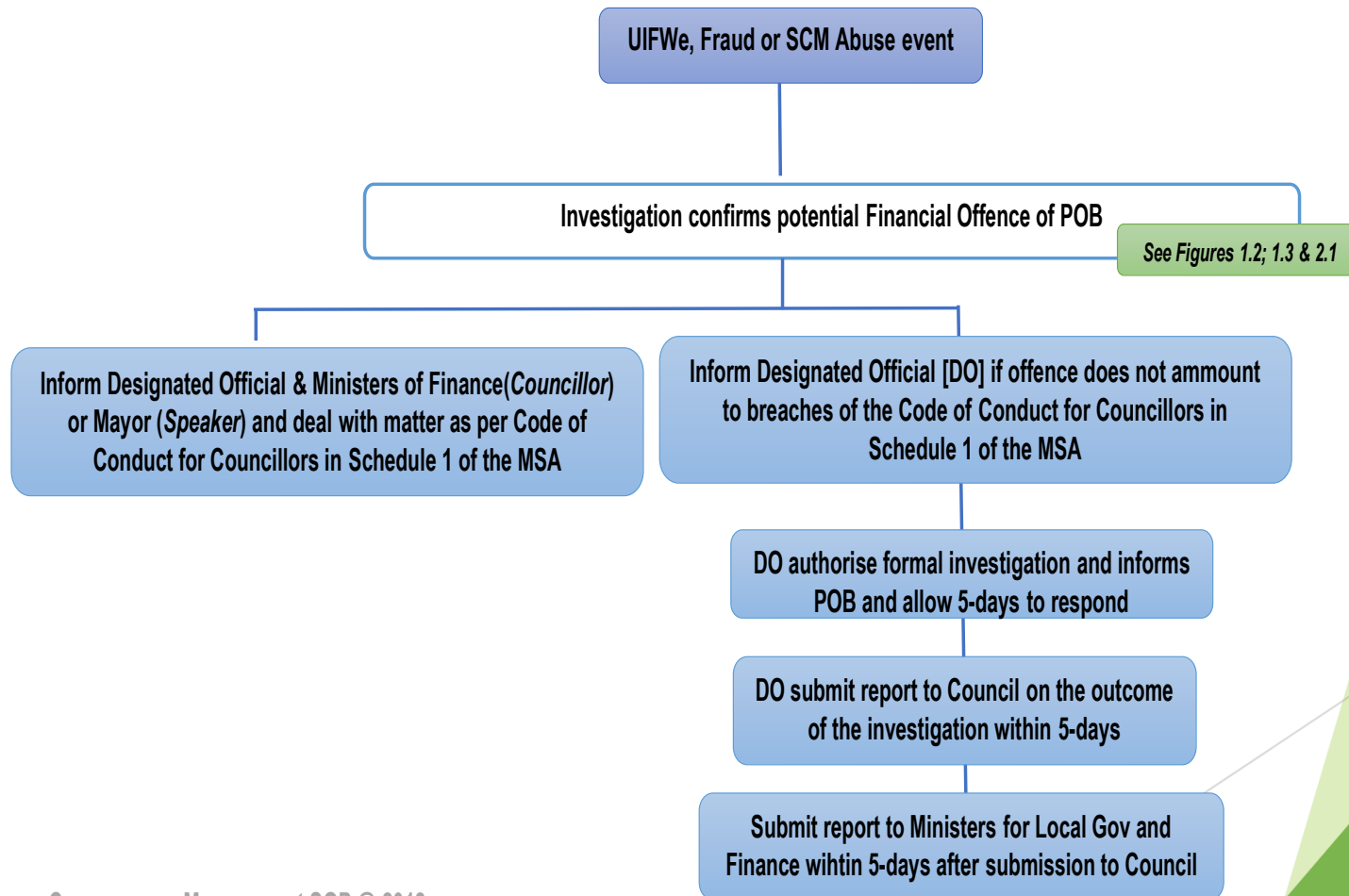
INVESTIGATION: GENERAL

2. INVESTIGATION: 2.1. GENERAL



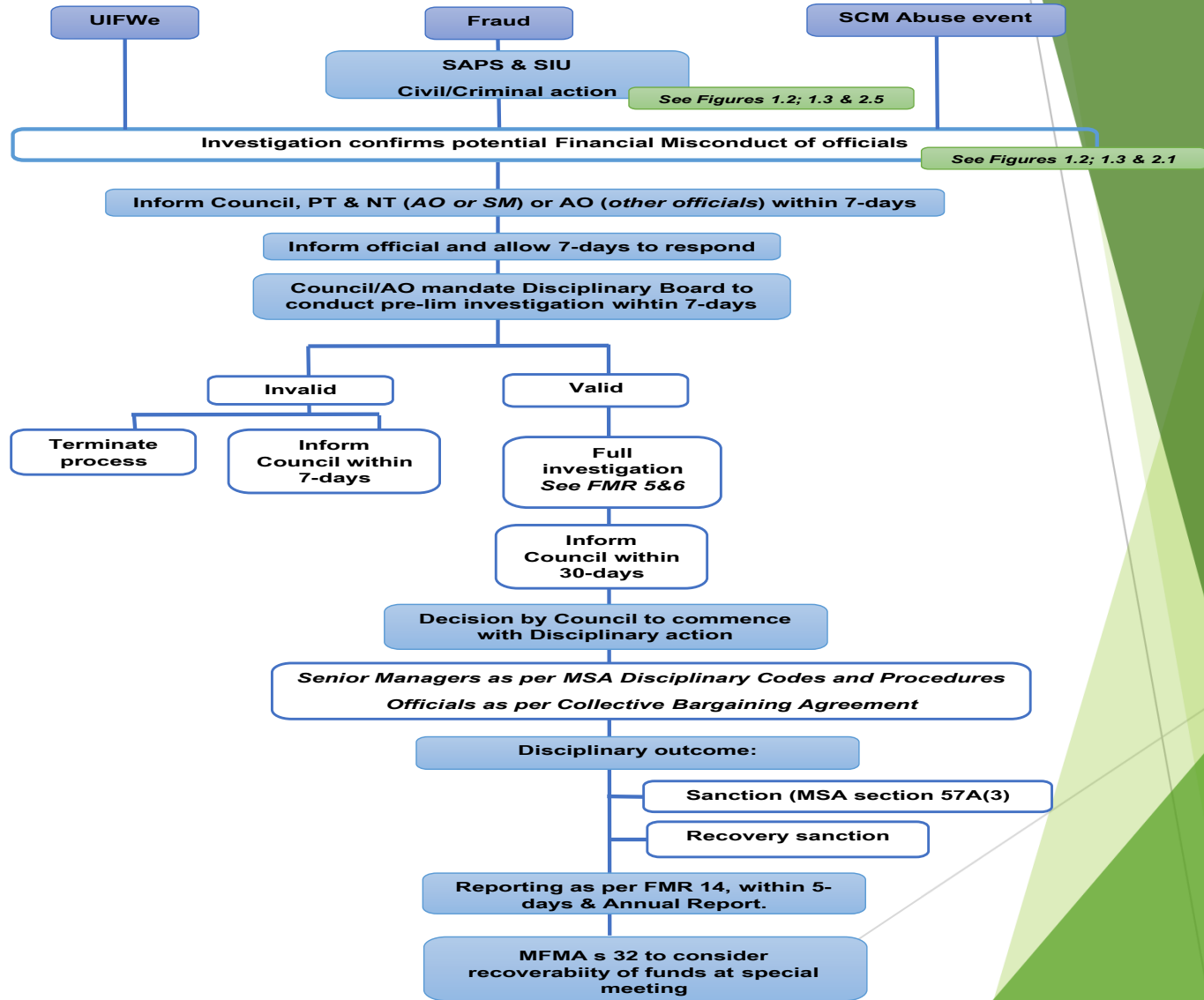
INVESTIGATION: POLITICAL OFFICE BEARER

2. INVESTIGATION – 2.2. LIABILITY IN LAW OF POLITICAL OFFICE BEARERS



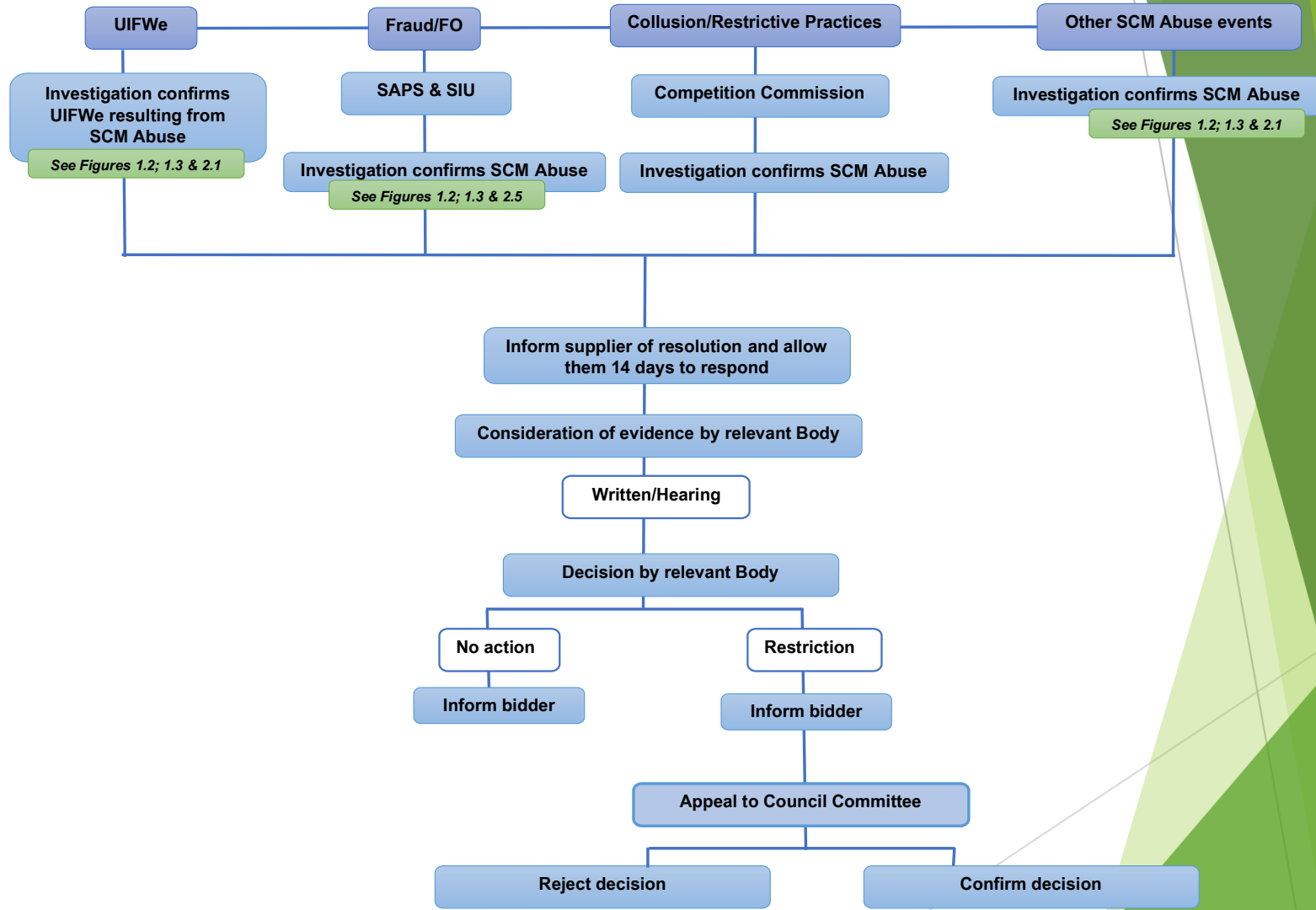
INVESTIGATION: LIABILITY IN LAW OF OFFICIALS

2. INVESTIGATION – 2.3. LIABILITY IN LAW OF OFFICIALS



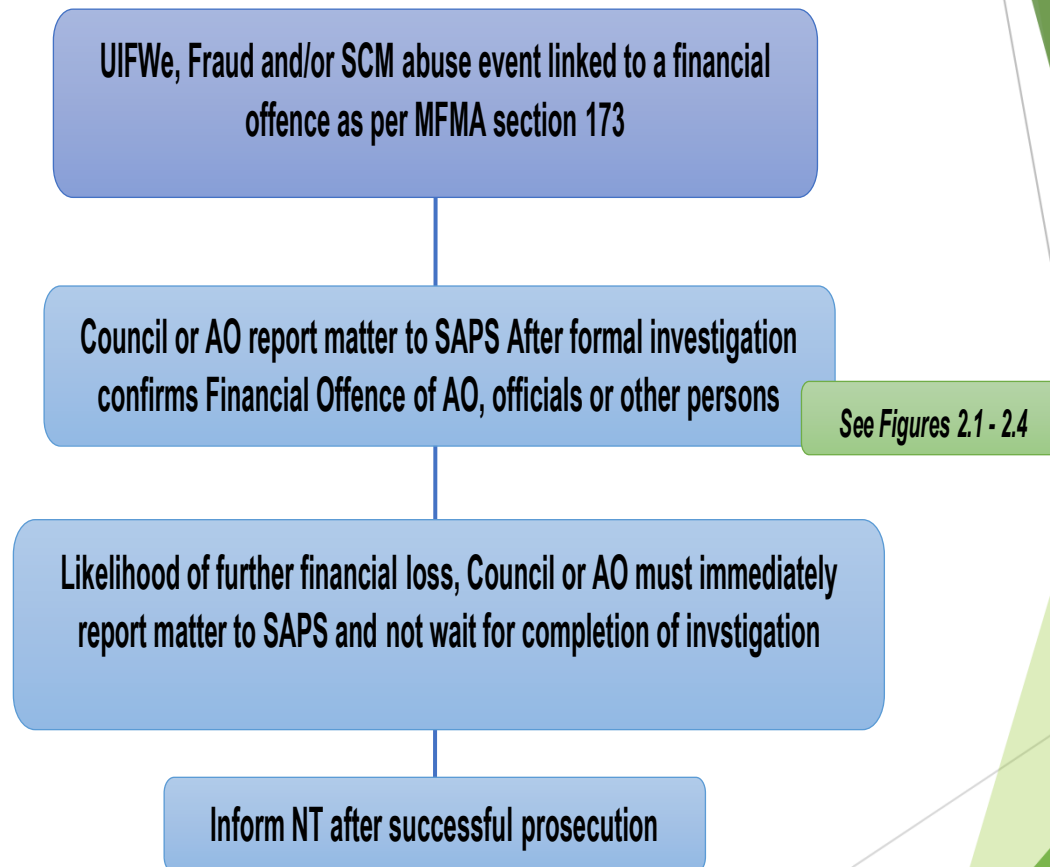
INVESTIGATION: SUPPLIERS

2. INVESTIGATION – 2.4. LIABILITY IN LAW OF SUPPLIERS



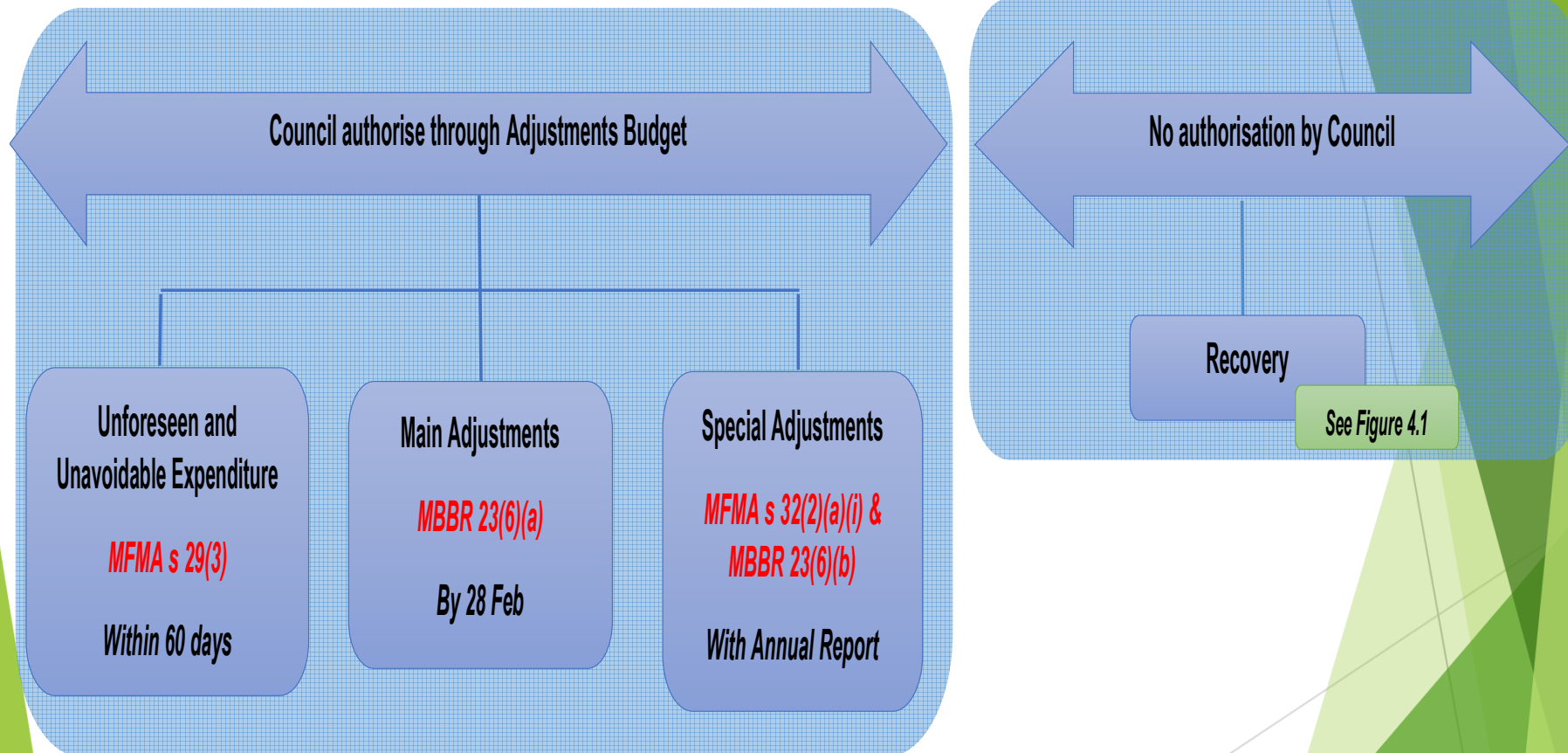
INVESTIGATION: FINANCIAL OFFENCES

2. INVESTIGATION – 2.5. LIABILITY IN LAW FOR FINANCIAL OFFENCES



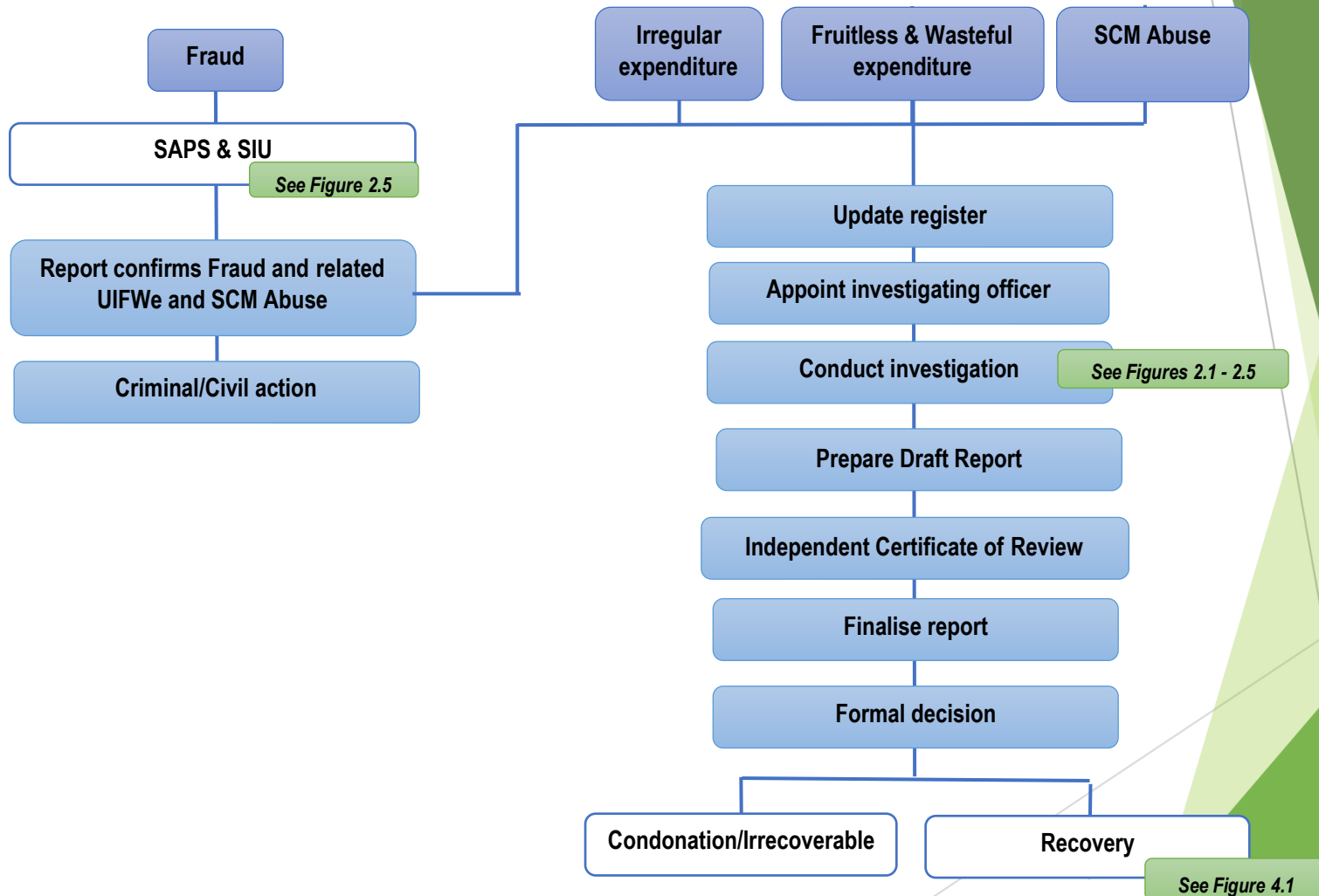
TREATMENT: Ue

3.TREATMENT: 3.1. Ue



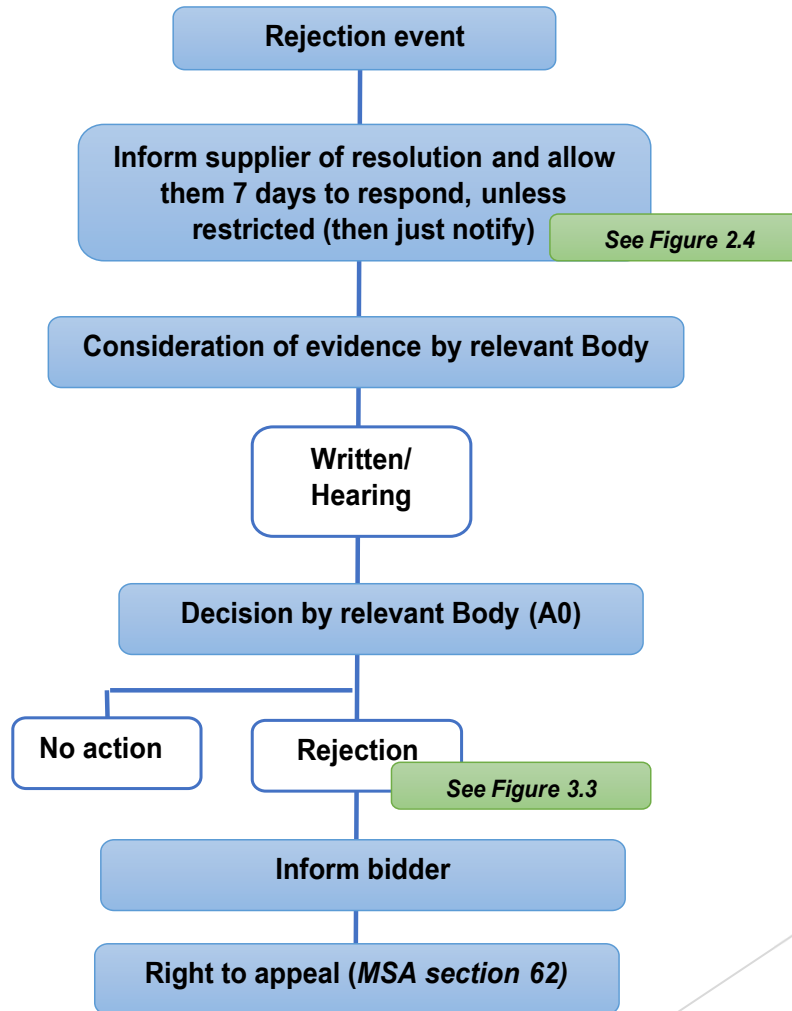
TREATMENT: IFWe

3.TREATMENT: 3.2. IFWe

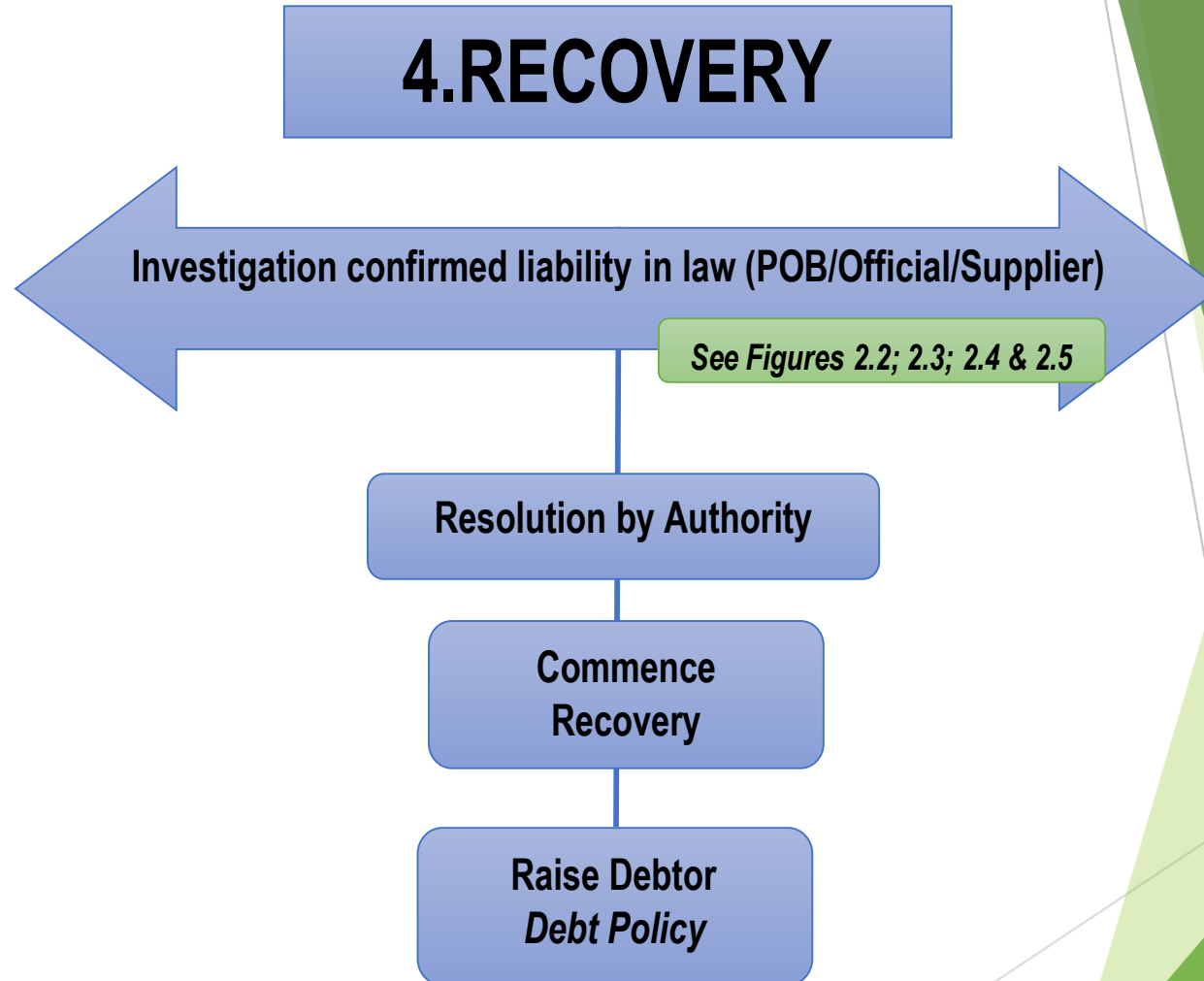


TREATMENT: SUPPLIERS (Restriction/Rejection)

3.TREATMENT: 3.3. SUPPLIERS (Restriction/Rejection)



RECOVERY



CONSEQUENCE MANAGEMENT SOP content

PART 1	ABBREVIATIONS, DEFINITIONS AND DESCRIPTIONS
PART 2	CONTEXT
PART 3	OBJECTIVES
PART 4	APPROACH
PART 5	APPLICATION
PART 6	MAINTENANCE
PART 7	IMPLEMENTATION
PART 8	GOVERNANCE AND REGULATORY FRAMEWORK
PART 9	ROLEPLAYERS ROLES AND RESPONSIBILITIES

CONSEQUENCE MANAGEMENT SOP content

PART 10 MANAGEMENT AND TREATMENT OF

UIFWe:

- RATIFICATION OF MINOR BREACHES
- UNAUTHORISED EXPENDITURE
- IRREGULAR EXPENDITURE
- FRUITLESS AND WASTEFULL EXPENDITURE
- CONSIDERATION OF CONDONATION/IRRECOVERABILITY
- ACCOUNTING TREATMENT

CONSEQUENCE MANAGEMENT SOP content

PART 11 MANAGEMENT AND TREATMENT OF FINANCIAL MISCONDUCT/OFFENCES

- NOTIFICATION
- RECORDING
- DETERMINATION OF VIABILITY
- FORMAL INVESTIGATION
- FORMAL DISCIPLINARY PROCESS
- REPORTING AFTER FINALISATION OF DISCIPLINARY PROCESS
- CONFIDENTIALITY OF PROCESS AND OFFICIALS
- CLOSURE, MONITORING, EVALUATION AND GENERAL REPORTING

CONSEQUENCE MANAGEMENT SOP content

PART 12 MANAGEMENT AND TREATMENT OF SCM ABUSE

RESTRICTION OF SUPPLIERS/SERVICE PROVIDERS OR REJECTION OF BIDS:

- DUTY TO ACT
- POWERS OF THE MUNICIPALITY TO RESTRICT SUPPLIERS
- RESTRICTION OF SUPPLIERS/SERVICE PROVIDERS:
 - NOTICE
 - ACCESS TO INFORMATION
 - ADJUDICATION MATTERS
 - SANCTIONS
 - NOTIFICATION OF DECISION
 - INFORMING NATIONAL TREASURY
 - UPLIFTING SANCTIONS
 - ONUS
- REJECTION OF BIDS:
 - NOTICE
 - ACCESS TO INFORMATION
 - DECISION
 - NOTIFICATION OF DECISION

CONSEQUENCE MANAGEMENT SOP content

PART 13

GOVERNANCE STRUCTURES:

- MFMA section 32 COMMITTEE
- DISCIPLINARY BOARD
- SUPPLIER RESTRICTION COMMITTEE

CONSEQUENCE MANAGEMENT SOP content

PART 14 COMMITTEE FUNCTIONS:

- BUSINESS CASE
- TERMS OF REFERENCE
- BUSINESS OF COMMITTEE
- ETHICAL STANDARDS AND CONFIDENTIALITY
- ADMINISTRATION
- MEETING PROCEDURES
- MANDATES
- COMMITTEE FUNCTIONS
- COMMITTEE POWERS
- COMMITTEE HEARINGS
- APPEALS

CONSEQUENCE MANAGEMENT SOP content

PART 15	TAKING AN AFFIDAVIT
PART 16	FORM CONTROL

Consequence Management SOP templates

CM 001	Notification Form
CM 002	Case file cover page Form
CM 003	Checklist Form
CM 004	Registers
CM 005	Classification
CM 006	Declaration of interest and confidentiality
CM 007	SCM system abuse Management Decision Form re validity/viability of allegation
CM 008	IFW&U Management Decision Form re validity/viability of allegation
CM 009	Financial Misconduct Management Decision Form re validity/viability of allegation
CM 010	Referral to CFO Form
CM 011	Reporting to AO/Mayor Form
CM 012	Reporting to [State] Attorney Form
CM 013	Reporting to Ministers/AGSA/PT/NT Form
CM 014	Reporting to HRM Form
CM 015	Referral to FI/SAPS Form
CM 016	Referral to Chief Audit Executive Form
CM 017	Affidavit and Oath Form
CM 018	Case file logbook
CM 019	Report on IFW&U investigation to Committee
CM 020	Review Certificate Form
CM 021	File Closure Form
CM 022	Mandate for Investigating Officer
CM 023	Letter of demand
CM 024	Submission for condonation template

NOW FOR YOUR INPUTS



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