



UNAUTHORISED ,IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE PRESENTATION

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PRESENTATION OUTLINE



- ☐ Background
- ☐ UIFW Definitions;
- ☐ Causes of UIFW;
- ☐ Prevention of UIFW;
- ☐ Financial Misconduct;
- ☐ UIFW - Reporting process as per MFMA sec 32;
- ☐ Condoning UIFW;
- ☐ UIFW register – Annexure A
- ☐ Treatment of UIFW – Annexure C
- ☐ Accounting Treatment & Disclosure of UIFW expenditure - Annexure D
- ☐ Proposed Circular 68 amendments

QUANTUM OF UIFW

Irregular Expenditure			
2017/2018	2018/2019	2019/2020	
R25.2billion	R32.06billion	R26billion	
Fruitless and Wasteful Expenditure			
R4.27billion over a 3 year period across municipalities			
Due to a poor track record in dealing with irregular expenditure			
and ensuring accountability, irregular expenditure has accumulated to			
R65.59billion (i.e. had not been dealt with through recovery,			
condonement or write-off)			

BACKGROUND

Section 217 of the Constitution provides that

(1) “When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is ***fair, equitable, transparent, competitive and cost-effective***.”

(2) Subsection (1) **does not prevent** the organs of state or institutions referred to in that subsection **from implementing a procurement policy providing** for-

- (a) **categories of preference** in the allocation of contracts;
- (b) the **protection or advancement of persons**, or categories of persons, **disadvantaged by unfair discrimination**

- Based on the above, when an organ of state contravenes or violates relevant legislation, PFMA or MFMA, it is potentially violating the constitution of the Republic as for any legislation to be enacted as law, it has to be in line with the provisions of the Constitution of the Republic;
- UIFW is normally incurred in instances where the SCM or Procurement Process was judged not to be “fair, equitable, transparent, competitive and cost-effective”; or
- The municipality failed to consider the relevant legislations like BBBEE, PPPFA that promote and protect categories of persons, disadvantaged by unfair discrimination; or
- Providing ***stipulated minimum threshold*** of portion of local production and content as determined by the Department of Trade and Industry

UIFW DEFINITIONS

UIFW Expenditure is expenditure as defined in Section 1 of the MFMA as follows:

1. Unauthorised expenditure

“Unauthorised expenditure”, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with **Section 15 or 11(3)**, and includes—

- (a) overspending of the total amount appropriated in the municipality’s approved budget;
- (b) overspending of the total amount appropriated for a vote in the approved budget;
- (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of “allocation” otherwise than in accordance with any conditions of the allocation; or
- (f) a grant by the municipality otherwise than in accordance with this Act.

Section 15 of the MFMA provides that a municipality may incur expenditure only in terms of an approved budget. This is confirmed by **section 32(2) (a) (i) of the MFMA** that provides that council may only authorize unauthorised expenditure in an adjustments budget

2. Irregular expenditure

“Irregular expenditure”, in relation to a municipality or municipal entity, means—

- (a) 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;
- (b) 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;
- (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or
- (d) 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, but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”.

3. Fruitless and wasteful expenditure

“Fruitless and wasteful expenditure” means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

Fruitless and wasteful expenditure within the Municipality mostly relates to interest levied and paid on late payments.

NB: Fruitless and wasteful expenditure must fulfil both the conditions in the definition, namely, that it was made in vain, and it would have been avoided had reasonable care been exercised

IRREGULAR VS UNAUTHORISED EXPENDITURE

DISTINCTION BETWEEN UNAUTHORISED EXPENDITURE AND IRREGULAR EXPENDITURE

Considering that irregular expenditure is defined as expenditure other than unauthorised expenditure, this means that **unauthorised** expenditure shall take precedence over **irregular** expenditure

MAJOR CAUSES OF UIFW IN MUNICIPALITIES

- ☐ Blatant disregard for controls, circulars, regulations, compliance with legislation and AGSA recommendations;
- ☐ In some cases, if not most, inadequate controls are implemented to ensure that the municipalities do not incur or pay exorbitant prices for goods and services thereby ensuring value for money (Fruitless & wasteful expenditure);
- ☐ Absence of Standard operating procedures (SOPs) thereby ensuring that officials are guided by uniformity and consistency in executing their duties
- ☐ Lack of/ or absence of Procurement Plans aligned to approved budgets and/ or an absence of needs assessment to justify the spending guided by Circular 82 to contain/cut costs;
- ☐ Abuse of deviations, which are allowed in law as long as justifiable in terms of s36(1) of the SCM Regulations, remains one of the challenges engulfing the municipalities whereby normal procurement processes are by-passed to favour certain service providers or procuring goods or services not prioritized in terms of service delivery;

MAJOR CAUSES OF UIFW IN MUNICIPALITIES

- ☐ Abuse of section 32 in terms of SCM Regulations whereby SCM processes are by-passed illegally to favour certain companies already providing services in other organs of state
- ☐ Lack of consistency on the part of the SCM officials to ensure that the product/goods or services being procured are comparable and competitive in terms of what is available in an open market (prices are market related) prior to initiating a procurement process;
- ☐ Lack of obtaining sufficient or required quotations guided by SCM regulations to ensure that prices to be paid are competitive and market related to ensure cost containment measures;
- ☐ Poor contract management and lack of performance management of service providers contribute immensely in municipalities not getting value for money for goods and services derived through SCM processes and expenditure management
- ☐ Failure to budget for operations and maintenance (repairs) for capital infrastructure/assets to preserve its life-span thereby not deriving proper value from the use of the assets
- ☐ Unjustifiable catering costs for meetings/events disregarding Circular 82 on cost containment, now a Regulation effective from 01/07/2019;

PREVENTION OF UIFW

General Financial Management Functions - MFMA – s62(1)(d)

- ☐ The Accounting officer is supposed to take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented; and a supply chain management policy is strictly implemented
- ☐ Among the issues that have been raised by The Auditor General under **Expenditure Management** in various Audit Reports of the municipalities is the general failure to implement the above section;
- ☐ The implementation of the above section can be affected in various ways, including strict adherence to SCM Regulations in a form of using a **Procurement Checklist** that can form part of SCM Vouchers for each procurement process

FINANCIAL MISCONDUCT – CONSEQUENCE MANAGEMENT

- ❑ An accounting officer of a municipality or municipal entity commits an act of financial misconduct if deliberately or negligently contravenes a provision in the MFMA, makes or permits or instructs another official to incur UIFW expenditure, provides incorrect or misleading information to the mayor, council, AGSA, National Treasury or other organs of state and the public.
- ❑ An accounting officer must take disciplinary action or, when appropriate, criminal proceedings against any official of the municipality who has allegedly committed an act of financial misconduct;
- ❑ Officials commit financial misconduct if they deliberately or negligently fail to carry out delegated duty, makes or permits or instructs another official to incur UIFW expenditure or provides incorrect or misleading information to the accounting officer;
- ❑ The financial misconduct regulations provide requirements for dealing with financial misconduct, including that the allegation should be referred to the disciplinary boards in terms of MFMA Circular 76 within seven days after receiving report of the allegation.

MFMA S32 & CIRCULAR 68 – REPORTING OF UIFW

- (1) Without limiting liability in terms of the common law or other legislation—
- (a) a political office-bearer of a municipality is **liable** for unauthorised expenditure if that office-bearer **knowingly** or **after having been advised** by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;
 - (b) the accounting officer is **liable** for unauthorised expenditure **deliberately** or **negligently incurred** by the accounting officer, subject to subsection (3);
 - (c) any political office-bearer or official of a municipality who **deliberately** or **negligently committed**, made or authorised an irregular expenditure, is liable for that expenditure; or
 - (d) any political office-bearer or official of a municipality who **deliberately** or **negligently made** or authorised a fruitless and wasteful expenditure is liable for that expenditure.

MFMA S32 & CIRCULAR 68 – REPORTING OF UIFW

(2) A municipality **must recover** unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure—

(a) in the case of **unauthorised expenditure**, is—

(i) authorised in an adjustments budget; or

(ii) certified by the municipal council, *after investigation by a council committee*, as irrecoverable and written off by the council; and

(b) in the case of **irregular or fruitless and wasteful expenditure**, is, ***after investigation*** by a council committee, certified by the council as irrecoverable and written off by the council.

(3) If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality has taken a decision which, **if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure**, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.

MFMA S32 & CIRCULAR 68 – REPORTING OF UIFW

- (4) The accounting officer must **promptly** inform the mayor, the MEC for local government in the province and the Auditor General, in writing of;
- (a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;
 - (b) whether any **person is responsible** or **under investigation** for such unauthorised, irregular or fruitless and wasteful expenditure; and
 - (c) the steps that have been taken by the municipality;
 - (i) to **recover** or **rectify** such expenditure; and
 - (ii) to **prevent** a recurrence of such expenditure

The writing off in terms of subsection (2) of any UIFW as irrecoverable is no excuse in criminal or disciplinary proceedings of person charged with the commission of an offence or breach of MFMA;

- (6) The Accounting Officer must report to the South African Police Services all cases of alleged-
- (a) irregular expenditure that constitutes criminal offense;
 - (b) theft and fraud occurred in the municipality
- (7) The Council of the Municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the SAPS, if-
- (a) the charge is against the Accounting Officer; or
 - (b) the Accounting Officer fails to comply with that subsection

CONDONING UIFW

- ❑ Irregular expenditure resulting from non-compliance with the MFMA and the MSA cannot be condoned by Council and approval must be sought from the National Treasury in terms of S170 of the MFMA, having complied with S32(4) of the MFMA.
- ❑ Irregular expenditure resulting from non-compliance with the Public Officer Bearer's Act cannot be condoned and such irregular expenditure must be recovered from the political officer bearer concerned, refer to s167(2) of the MFMA.
- ❑ A council may condone irregular expenditure resulting from a contravention of the SCM policy provided that the contravention is not also a contravention of the MFMA or the SCM Regulations, in which case only the National Treasury can condone a contravention of the SCM Regulations
- ❑ Minor breaches of the procurement process can be ratified by the accounting officer (if the municipality's SCM policy allows for it). Only the breaches in the process can be ratified and not the irregular expenditure itself.
- ❑ The irregular expenditure must still be ratified by Council, which means the **municipal Council's power in terms of the MFMA is to certify the irregular expenditure as irrecoverable and written off by the council** however the **condonation of any act of non-compliance in terms of the MFMA** or any of its regulations is subject to ratification by the National Treasury.

UIFW REGISTER – CIRCULAR 68

Register of unauthorised, irregular, fruitless and wasteful expenditure

The introduction of a 'register' to capture unauthorised, irregular, fruitless and wasteful expenditure ensures that financial management in municipalities and municipal entities are improved

NB: Refer to Revised Circular 68 - Annexure A



Document

- ☐ **Annexure A** sets out the minimum information that should appear in such a Register. Municipalities and municipal entities are free to add more detail should they deem this necessary.
- ☐ The aim of the Register is also to serve as a tool for recording all unauthorised, irregular, fruitless and wasteful expenditures and for tracking progress in dealing with the consequences flowing from such expenditures until all the issues that gave rise to the expenditures are properly resolved in accordance with the legal framework.

TREATMENT OF UIFW

- ❑ All instances of unauthorised, irregular, fruitless and wasteful expenditures must be reported to the mayor, the MEC for finance and local government in the province, the Auditor-General, disclosed in the annual report, and reported to council.
- ❑ This disclosure will assist in addressing challenges relating to expenditure control and transparent reporting in order to strengthen accountability and give full effect to the compliance, monitoring, reporting and support measures introduced by the Provincial and National Treasuries as required in the MFMA.

NB: Refer to Revised Circular 68 - Annexure C



- ❑ **Annexure C** provides step-by-step guidelines on the treatment of UIFW upon discovery.

ACCOUNTING TREATMENT and DISCLOSURE

- ❑ Irregular expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.
- ❑ The Accounting Officer must also include the expenditure in the municipality's monthly revenue and expenditure report (Section 71) submitted to the Council in terms of the MFMA. All unauthorised, irregular or fruitless and wasteful expenditure must be reported as a note to the annual financial statements
- ❑ At year end, the Annual Financial Statements must comply with **s125(2)(d) of the MFMA** which provides that “The notes to the annual financial statements of a municipality must disclose particulars of any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a municipality, any material unauthorised expenditure, that occurred during the financial year and whether these are **recoverable**, any criminal or disciplinary steps taken as a result of such losses or such unauthorised, irregular or fruitless and wasteful expenditures and any material losses recovered **or written off.**”
- ❑ Annexure D of MFMA Circular No 68 describes in detail, the disclosure and accounting treatment of UIFW.



CIRCULAR 68 – PROPOSED AMENDMENTS

National Treasury is currently undertaking amendments to MFMA Circular 68, the revisions are said to focus largely around the following areas of :

- ☐ UIFW expenditure processes in municipal entities,
- ☐ UIFW expenditure issues emanating from the Division of Revenue Act and its implications from a MFMA perspective;
- ☐ Implication of VAT on irregular expenditure disclosures from an accounting disclosure perspective.

DISCLOSURE OF IRREGULAR EXPENDITURE VAT INCLUSIVE

- ☐ “Municipalities are advised to record their irregular expenditure in the irregular expenditure register and consequently disclose it in the annual financial statements (AFS) inclusive of VAT. The latter is due to the amount of the transgression from the provisions of the applicable legislation as contained in the definition of the irregular expenditure is the full value of the transaction involved and not just a portion of the transaction. It is therefore important to include VAT in the register and the AFS disclosure note for them to also be complete.” – proposed revised circular 68 , May 2021

CIRCULAR 68 – PROPOSED AMENDMENTS

APPLICATION OF GRAP 24

- ❑ “When it comes to disclosure of irregular expenditure due to non-compliance with section 87(8) of the MFMA by municipalities, reference must be made to GRAP 24 or apply the sentiments of GRAP 24 which is an accounting standard that deals with budget vs actual amounts, and it requires a separate line item and material variances to be explained. Therefore, there should be a separate line-item disclosure and explanations of material variance rather than just showing total amounts when municipal entities disclose irregular expenditure due to non-compliance with section 87(8) of the MFMA” proposed revised circular 68 , May 2021

IRREGULAR EXPENDITURE INCURRED BY MUNICIPAL ENTITIES

- ❑ “Section 102 of the MFMA read together with regulation 75 of the MBRR provides the framework within which a municipal entity will deal with irregular expenditure. Regulation 75(1) of the MBRR grants the board of directors, the power to investigate instances of irregular expenditure in the municipal entity and upon the conclusion of such an investigation, it must decide whether the expenditure is irrecoverable. Therefore, the board of directors will take the final decision on the recoverability of irregular expenditure and report to the municipal council of the parent municipality for noting.” proposed revised circular 68 , May 2021
- ❑ “The board of directors therefore has the same powers as the municipal council (as outlined in section 32(2)(b) of the MFMA) when it comes to deciding whether to write-off or recover irregular expenditure.” proposed revised circular 68 , May 2021

WHERE TO FROM HERE???

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THE END

Thank you!

