

NTINGA OR TAMBO DEVELOPMENT AGENCY



SOC LTD

Irregular, Unauthorized & Fruitless & Wasteful Expenditure

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Notwithstanding the review date herein, this policy shall remain effective until such time approved otherwise by the Board and may be reviewed on an earlier date if necessary.

**TOP TEN BASIC VALUES AND PRINCIPLES
(PUBLIC ADMINISTRATION)**

Chapter 10, Section 195 of the Constitution of the Republic of South Africa
(Act No. 108 of 1996)

Public Service must be:

1. Governed by the democratic values and principles enshrined in the Constitution;
2. Maintaining and promoting a high standard of professional ethics;
3. Promoting efficient, economic and effective use of resources;
4. Orientated towards development;
5. Delivering services impartially, fairly, equitably and without bias;
6. Responding to people's needs and encouraging public participation;
7. Accountable for its actions;
8. Transparent by providing the public with timely, accessible and accurate information;
9. Cultivating good human resource management and career development practices to maximise human potential; and
10. Broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past.

TABLE OF CONTENTS

Contents

1. INTRODUCTION	5
2. BACKGROUND	5
3. LEGISLATION	5
3.1 Specific stipulations of the Act	5
3.1.2 Unauthorized Expenditure	7
3.1.3 Fruitless and Wasteful Expenditure Means	8
3.2 Interpretation	9
4. LIABILITY	11
5. PROCESS TO BE FOLLOWED WHEN DEALING WITH IRREGULAR, UNAUTHORIZED AND FRUITLESS AND WASTEFUL EXPENDITURE..	12
6. DISCIPLINARY AND CRIMINAL PROCEEDINGS.....	14
7. FINANCIAL ACCOUNTING.....	14
8. CONCLUSION.....	15
9. APPROVAL AND SIGNATURES.....	15

1. INTRODUCTION:

Irregular, Unauthorized and Fruitless and Wasteful expenses can be described as “negative forces working against effective administration” which create numerous problems for many municipalities and municipal entities simply because of interpretational problems and some vague stipulations in relevant legislation. The purpose of this document is to provide clarity on the procedures to be followed when dealing with unauthorized, irregular or fruitless and wasteful expenditure as defined in section 1 of the MFMA.

2. BACKGROUND:

The Auditor General has highlighted an escalating trend in unauthorized, irregular, fruitless and wasteful expenditure in municipalities and municipal entities over recent years, evident in the audit reports and summarized in the annual reports.

In terms of section 4(2)(a) of the Municipal Systems Act (MSA), the Board of Directors (Board), Accounting officer and officials has a duty to use the resources of Ntinga O. R. Tambo Development Agency SOC LTD (Entity) in the best interest of the local community. This duty is extended to individual Board members and officials through the code of conduct for Board members and officials which states that a Board member and an official must:

- (i) Perform the functions of office in good faith, honestly and in a transparent manner, and
- (ii) At all times act in the best interests of the community and in such a way that the credibility and integrity of the Entity are not compromised.

3. LEGISLATION:

Various National statutes were passed pursuant to the stipulations of the Constitution relating to Local Government in general, but the Local Government : Municipal Finance Management Act, 2003 (Act No 56 of 2003) primarily regulates the matter under discussion. The Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003) will henceforth be referred to as the Act.

Section 2 of the Act (objectives) basically confirms the ideals as set out in the Constitution and it is advisable that all officials and political office bearers acquaint themselves with the contents thereof.

3.1 Specific stipulations of the Act:

The Act distinguishes between “irregular”, “unauthorized” and “fruitless and wasteful” expenditure by means of a definition of each concept as follows:

3.1.1 Irregular expenditure means:

- (a) Incurred in contravention of, or that is not in accordance with a requirement of the Act, and which has not been condoned in terms of Section 170 of the Act.

- (b) Incurred in contravention of, or that is not in accordance with a requirement of the Municipal Systems Act, 2000 (Act No 32 of 2000) and which has not been condoned in terms of that Act.
- (c) Incurred in contravention of, or that is not in accordance with, a requirement of the Remuneration of Public Office-Bearers Act, 1998 (Act No 20 of 1998)
- (d) Incurred in contravention of, or that is not in accordance with, a requirement of the Supply Chain Management Policy of the Entity or any of the Municipal entity'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 which falls within the definition of "Unauthorized expenditure".
- (e) Irregular expenditure can thus be classified as expenditure incurred in contravention of or not in accordance with statutory requirements.

In this context 'expenditure' refers to any use of the municipal entity's funds that is in contravention of the following legislation:

1. MFMA, Act 56 of 2003, and its regulations;
2. Municipal systems act, Act 32 of 2000, and its regulations;
3. Public office-bearers Act, Act 20 of 1998, and its regulations; and
4. The Entity's supply chain management policy, and any by-laws giving effect to that policy.

Although a transaction or an event may trigger irregular expenditure, a municipal entity will only identify irregular expenditure when a payment is made, in other words, the recognition of irregular expenditure will be linked to a financial transaction. If the possibility of irregular is determined prior to a payment being made, the transgression shall be regarded as a matter of non-compliance.

3.1.2 **Unauthorized Expenditure:**

Means Expenditure incurred by the Entity otherwise than in accordance with Section 15 or 11(3). This includes:

- (a) Overspending of the total amount appropriated in the Entity'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 specific purpose, otherwise than for

that specific purposes;

- (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

Section 15 of the MFMA deals with appropriation of funds for expenditure and provides that the Entity may, except where otherwise provided in the MFMA, incur expenditure only in terms of an approved budget and within the limits of the amounts appropriate for the different votes in an approved budget. With reference to MFMA section 1 (a) in the definition above, a municipal entity's budget is divided into an operational budget and capital budget. Overspending must be determined in relation to both the operational budget and capital budget.

Overspending must also be determined in relation to each of the votes on both the operational budget and the capital budget. Where board of directors has approved a budget policy or virement policy that allows the accounting officer to make limited shifts of funds between votes, must also be taken into account.

EXPENDITURE THAT IS NOT CLASSIFIED AS UNAUTHORISED EXPENDITURE, notwithstanding the fact that no provision has been made on the budget:

- (i) Any over collection on the revenue side of the budget as this is not an expenditure; and
- (ii) Any expenditure incurred in respect of:
 - Re-allocation of funds and the use of such funds in accordance with Board committee approved virement policy;
Unforeseen and unavoidable expenditure (expenditure that could not have been foreseen at the time the annual budget of the municipal entity was passed) is unauthorised if the Board does not appropriate the expenditure in an adjustments budget that is passed within 60 days after the expenditure was incurred or it does not fall within the ambit of regulation 71 and 72 then the expenditure is unauthorized.

3.1.3 Fruitless and Wasteful Expenditure Means:

Expenditure that was made in vain that would have been avoided had reasonable care been exercised.

3.2 Interpretation

The concept of fruitless and wasteful expenditure is founded on public administration and accountability principles, to promote "efficient, economic and effective use of resources and the attainment of value for money". The idea is also founded on the fact that the Board, the Accounting Officer and the CFO have fiduciary responsibility to ensure that the Entity's resources are used in the best interest of the municipal entity and the local community.

In this context 'expenditure' refers broadly to processes that must be followed, transactions with service providers or suppliers and the use of other resources belonging to Entity. The phrase 'made in vain' indicates that the Entity derived no value for money from the expenditure or the use of other resources. Fruitless and wasteful expenditure must fulfill both the conditions in the definition, namely, that it was made in vain and it would have been avoided had reasonable care been exercised.

To prevent fruitless and wasteful the Entity will always have to act cautiously when spending money. However, the matter of the fact remains that a particular expenditure may not be "irregular" or "unauthorized" but yet "fruitless and wasteful" which leads to the question, what measures could possibly be implemented to avoid it. The following questions should be addressed prior to the spending of a municipal entity's funds such as:

3.2.1 Does the intended spending relate to the formal powers of the Municipality entity?

A Municipality entity may perform only those functions and powers conferred to it by the Constitution, parent municipality and relevant legislation. Any expenditure incurred relating to an act or conduct exercised outside those functions and powers will result in fruitless and wasteful expenditure notwithstanding sufficient provision has been made on the budget and correct procedures were followed in incurring the expenditure.

3.2.2 Will the expenditure further the interest of the Municipality entity?

The expenditure incurred to obtain a service, inventory, asset or to render a service must have been necessary and ideally unavoidable to enable the Entity to exercise its functions and powers in accordance with the relevant legislation. (see comments below 3.2.3)

3.2.3 Is it essential to incur the intended expenditure?

It is of paramount importance to incur expenditure only when it is really necessary or essential for purposes as mentioned under question 3.2.1 and 3.2.2 above. One should be satisfied that non-incurrence of such expenditure will have a negative impact on the lawful activities of the Entity.

3.2.4 Is any other option perhaps available to prevent the intended expenditure or to reduce it?

This question overlap to some extent with question 3.2.3 above but it is more specific in the sense that it puts pressure on the Entity to apply its mind and to consider all possible options. Should it appear after the expenditure has been incurred that a more effective and perhaps a less expensive option was at the disposal of the Entity but that it was ignored or disregarded without good cause the expense will be regarded as fruitless and wasteful.

3.2.5 Will the intended spending be done in accordance with good financial practice, ethical norms and transparency?

Lack of sound Financial and ethical practice may in many cases result in expenditure being regarded as fruitless and wasteful.

3.2.6 What are the chances that a human error will contribute to unnecessary expenditure?

Municipal entities on daily basis waste money as a result of errors by officials which could result in such expenditure be declared "fruitless and wasteful". Any expenditure incurred as a result of the negligence, or gross negligence in particular, of an official will almost always be regarded as fruitless and wasteful. Human errors manifest in various forms in municipal entities as a result of the divergent functions of municipal entities and no attempt will be made to mention specific examples. It is important though to take note that municipal entities must at all times ensure that their officials are sufficiently trained and equipped to do their jobs.

If a human error results in irregular or unauthorized expenditure such error will obviously not simultaneously be regarded as "fruitless and wasteful"

These questions obviously relate to fruitless and wasteful expenditure only. Questions relating to overspending of the budget or a specific vote or unrelated vote spending or non provision on the budget etc. are not applicable simply because such matters are covered under "unauthorized" or "irregular" expenditure.

4. LIABILITY

In terms of Section 32 of the Act liability for irregular, unauthorized and fruitless and wasteful expenditure will be incurred as follows:

By a Political office bearer:

- 4.1 Who knowingly or after having been advised by the Accounting Officer that a particular expenditure is likely to result in unauthorized expenditure, instructed an official to incur that expenditure;
- 4.2 Who deliberately or negligently committed, made or authorized an irregular expenditure; and
- 4.3 Who deliberately or negligently made or authorized a fruitless and wasteful expenditure

By an Accounting officer:

- 4.4 Who deliberately or negligently incur unauthorized expenditure;
- 4.5 Who deliberately or negligently committed, made or authorized an irregular expenditure; and
- 4.6 Who deliberately or negligently made or authorized a fruitless and wasteful expenditure.

By an Official:

- 4.7 Who deliberately or negligently committed, made or authorized an irregular expenditure;
- 4.8 Who deliberately or negligently made or authorized a fruitless and wasteful expenditure

It is important to note that liability in terms of Section 32 of the Act does not limit liability which may be incurred in terms of the common law or any other legislation.

5. PROCESS TO BE FOLLOWED WHEN DEALING WITH IRREGULAR, UNAUTHORIZED AND FRUITLESS AND WASTEFUL EXPENDITURE:

Unauthorized expenditure

In considering authorization of unauthorized expenditure, the Board must consider the following factors:

- 5.1 Has the matter been referred to Board for determination and decision
- 5.2 Has the nature, extent, grounds and value of the unauthorized expenditure been submitted to Board for recommendations and investigations?
 - 5.3 Are there good grounds shown as to why an unauthorized expenditure should be authorized? For example:
 - 5.3.1 Accounting officer or official was acting in the best interest of the Entity,
- 5.3.2 The accounting officer or official was acting in good faith, and
 - 5.3.3 The Entity has not suffered any material loss as a result of the action.

In these instances, the Board may authorize the unauthorized expenditure. If it is authorized there would be no further consequences for the Board members, Accounting officer and Officials.

Recovery of unauthorized expenditure

- 5.4 It must be recovered from the liable official unless the unauthorized expenditure has been authorized by Board in an adjustment budget.
- 5.5 The accounting officer must, in writing, request that the liable official pay the amount within 30 days or in reasonable installments.
 - 5.6 If the person fails to comply the matter should be handed over to the legal division for the recovery of the debt through the normal debt collection process.

Irregular expenditure

- 6. In terms of section 102(1) and (2), on discovery of any irregular expenditure

or any fruitless and wasteful expenditure, the Board must promptly report, in writing, to the mayor and municipal manager of the parent municipality and the Auditor General –

- a) Particulars of the expenditure; and
- b) Any steps that have been taken –
 - (i) To recover the expenditure; and
 - (ii) To prevent a recurrence of the expenditure

7. The Board must promptly report to the South African Police Service any-

- a) Irregular expenditure that may constitute a criminal offence; and
- b) Other losses suffered by the entity which resulted from suspected criminal conduct.

There is no provision to allow irregular expenditure resulting from the contravention of the Public Office-Bearer Act to be condoned. This is consistent with section 167(2) of the MFMA, which provides that such irregular expenditure cannot be written-off and must be recovered from the political office-bearer concerned.

A Board may condone a contravention of the Board approved SCM policy provided that the contravention, is not also a contravention of the MFMA or the SCM regulations, in which case only national treasury can condone a contravention of the SCM regulations. Any such requests must be accompanied by a full motivation and submitted to mfma@treasury.gov.za for consideration.

Once the Accounting officer or Board becomes aware of any allegation of irregular expenditure, such allegation may be referred to the Entity's own Internal Audit or any other appropriate investigative body for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official liable for the expenditure.

RATIFICATION OF MINOR BREACHES OF THE PROCUREMENT PROCESS

In terms of regulation 36(1)(b) of the municipal entity's supply chain management regulations and the SCM policy may allow the accounting officer to ratify any minor breaches of the procurement process by an official or committee acting in terms of delegated powers or duties which are purely technical in nature. Where the Entity's SCM policy does not include this provision the accounting officer cannot exercise this ratification power.

In terms of regulation 36 of the SCM regulations, the accounting officer is responsible for deciding whether a particular breach of procurement process is minor or material. In exercising this discretion the accounting officer must be guided by:

- (a) It is simply technical in nature not impacting in any significant way on the essential fairness, equity, transparency, competitiveness

or cost effectiveness of the procurement process.

- (b) Are the circumstances justifiable or at least excusable?
- (c) The intent of those responsible for the breach: were they acting in good faith?
- (d) The financial implication as a result of the breach: What was the extent of the loss or benefit?

8. DISCIPLINARY AND CRIMINAL PROCEEDINGS:

Although the three different concepts namely unauthorized, irregular or fruitless and wasteful expenditure are separately and individually defined in the Act they are treated equally when it comes to disciplinary and criminal proceedings. None of these are thus more or less serious than the other and are dealt with in exactly the same manner whenever it occurs for purposes of institution of disciplinary or criminal proceedings.

In terms of Section 171 of the Act financial misconduct is committed by the Accounting Officer, Chief Financial Officer or any other official who deliberately or negligently makes, permits or instructs another official of the Entity to make an unauthorized, irregular or fruitless and wasteful expenditure.

Such financial misconduct must be investigated unless it is frivolous, vexatious, speculative or obviously unfounded and disciplinary action must be instituted if the investigation warrants such conduct.

Section 173 of the Act stipulates that an Accounting Officer or any other official is guilty of a criminal offence if he/she deliberately or in a grossly negligent way makes or permits or instructs another official to make an unauthorized, irregular or fruitless and wasteful expenditure. In terms of Section 174 a person is liable on conviction to an appropriate fine or maximum imprisonment of five years.

9. FINANCIAL ACCOUNTING:

Unauthorized, Irregular and Fruitless and Wasteful Expenditure is accounted for as expenditure in the statement of financial performance, and where recovered is subsequently accounted for as revenue in the statement of financial performance.

Any political office bearer or official who deliberately or negligently made or authorized an unauthorized, irregular and fruitless and wasteful expenditure is liable for that expenditure. The Entity must recover the unauthorized, irregular and fruitless expenditure unless the expenditure:

- (ii) In the case of unauthorized expenditure is authorized in an Adjustment Budget or certified by the Board, after investigation by a Board Committee as irrecoverable and written off by the Board, and

- (iii) In the case of irregular or fruitless and wasteful expenditure is after an investigation by a Board Committee, certified by Board, as irrecoverable and written off by the Board.

Some examples of Unauthorized, Irregular and Fruitless and Wasteful Expenditure:

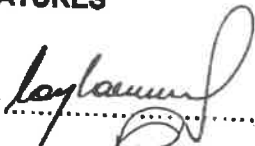
1. VAT not claimed on Capital or Operational Expenditure
2. No supporting documentation for Capital or Operational Expenditure
3. VAT penalty interest
4. Interest paid on Creditors that were not paid within 30 days
5. Late payment of PAYE, UIF, SDL
6. Board- remuneration not in accordance with guidelines as gazette from time to time
7. Unauthorized overtime paid
8. Non compliance to SCM Procurement Policy
9. Journals not authorized
10. Expenditure occurred that was not budgeted for.


10. CONCLUSION

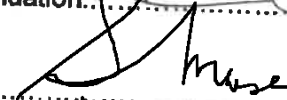
This policy provides for a basis by which the Entity can define, identify and respond to instances of unauthorized, irregular, fruitless and wasteful expenditure.

- All expenditure falling into the above category but not limited must be reported and investigated procedural as required by the MFMA, recommendations to Board for consideration and decisions must be taken on time.
- A register of unauthorized, irregular, fruitless and wasteful expenditure must be introduced for all transaction falling within this category.

11. APPROVAL AND SIGNATURES

Formulated by:  Date: 03 August 2020

CEO Recommendation:  Date: 03/08/2020

Board approval:  Date: 03/08/2020

BOARD APPROVED COPY
NTINGA O.R. TAMBO DEV. AGENCY
Date:.....
S.O.C
Signature:.....