



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

# **UPDATED GUIDELINE ON IRREGULAR EXPENDITURE**



**OFFICE OF THE ACCOUNTANT-GENERAL**

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# GUIDELINE ON IRREGULAR EXPENDITURE

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# GUIDELINE ON IRREGULAR EXPENDITURE

## PURPOSE

1. The purpose of this *Guideline* is to provide clarity on the procedures<sup>1</sup> to be followed when dealing with the identification and application of *irregular expenditure*, defined in section 1 of the Public Finance Management Act (PFMA), 1999 as '*expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including –*
  - (a) *this Act; or*
  - (b) *the State Tender Board Act, 1968 (Act No. 86 of 1968<sup>2</sup>), or any regulations made in terms of that Act; or*
  - (c) *any provincial legislation providing for procurement procedures in that provincial government.*
2. This Act in section 1 of the PFMA includes any regulations and instructions issued in terms of section 69, 76, 85 or 91.

## APPLICABILITY

3. This *Guideline* applies to all:
  - (a) Departments;
  - (b) Government Components;
  - (c) Trading Entities;
  - (d) Constitutional Institutions; and
  - (e) Public Entities listed in Schedule 2 and 3 to the PFMA.

## UPDATE OF THE GUIDELINE ON IRREGULAR EXPENDITURE

4. This *Guideline* is an **update** of the Guideline on Irregular Expenditure issued on 28 May 2014 and takes effect from 01 April 2015.

## PRINCIPLES FOR THE TIMING AND RECOGNITION OF IRREGULAR EXPENDITURE

5. For a department or a government component<sup>3</sup> to incur irregular expenditure, the transgression must be linked to a financial transaction. Although a transaction, condition or an event may trigger irregular expenditure, a department or a government component will only record irregular expenditure when a payment pertaining to the

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<sup>1</sup> This *Guideline* does not prescribe any new principle or procedure related to the identification and application of irregular expenditure but is merely a consolidation of provisions that are currently contained in Practice Note 4 of 2008/2009 on Irregular Expenditure.

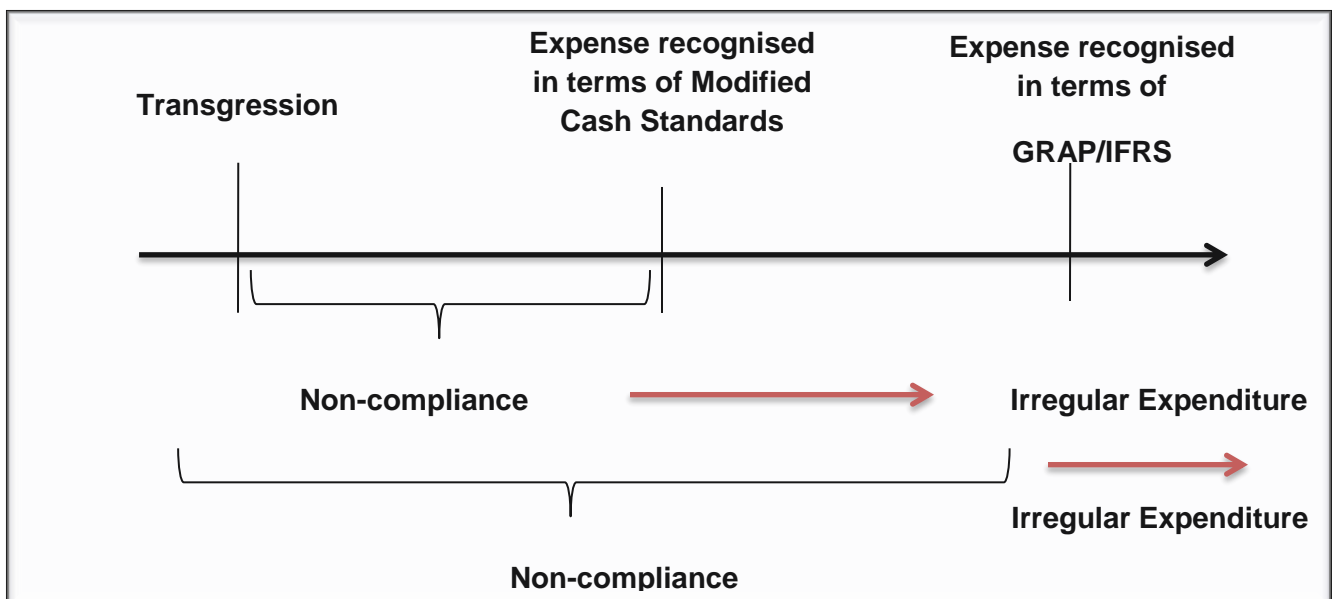
<sup>2</sup> **Annexure A** provides for the status of the State Tender Board Act, 1968 (Act No. 86 of 1968)

<sup>3</sup> This provision is applicable to those government components that are currently applying the modified cash basis of accounting and the Modified Cash Standard issued by the National Treasury.

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non-compliance is actually made (i.e. when the expenditure is recognised in accordance with the recognition principles contained in the Modified Cash Standard).

6. A constitutional institution, a government component required to comply with the standards of GRAP, a trading entity or a public entity listed in Schedules 2 or 3 to the PFMA shall incur irregular expenditure when a transaction, condition or an event linked to the transgression that has financial implications is recognised as expenditure in the Statement of Financial Performance in accordance with the Standards of Generally Recognised Accounting Practice (GRAP) or the International Financial Reporting Standards (IFRS).
7. **Figure 1** below provides for the non-compliance and recognition of irregular expenditure as referred to in paragraph 5 and 6 above. The diagram provides an indication that, if non-compliance is corrected or condoned prior to any expenditure being incurred in terms of the relevant accounting standards, such a transaction, condition or event will not result in irregular expenditure.



8. For the purposes of determining whether irregular expenditure has been incurred, there must first be a transgression of a provision contained in:-
  - (a) the PFMA;
  - (b) the Treasury Regulations;
  - (c) a National Treasury Instruction, issued in terms of section 76 of the PFMA;
  - (d) a Provincial Treasury Instruction issued in terms of section 18(2)(a) of the PFMA; or
  - (e) any other applicable legislation.
9. When applying the test to determine whether irregular expenditure has been incurred, it must be clear that the contravention must relate to how the transaction, condition or event was entered into and by whom as opposed to when the transaction, condition or

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event was entered into. For example, non-compliance with the requirement to pay an invoice within 30 days from its receipt (Treasury Regulation 8.2.3) shall not be regarded as irregular expenditure unless the expenditure itself was incurred in contravention of relevant legislation or was not authorized by a duly delegated official.

10. In addition to paragraph 9 above, such a transaction, condition or event must have been incurred in contravention of the relevant legislation and must also have a financial implication for it to constitute irregular expenditure.

### **FINANCIAL MISCONDUCT**

11. Section 38(1)(c)(ii) and section 51(1)(b)(ii) of the PFMA, requires an accounting officer or accounting authority to take effective and appropriate steps to, amongst others, prevent irregular expenditure.
12. In terms of section 81(1)(b) and 83(1)(b) of the PFMA, an accounting officer or accounting authority shall commit an act of financial misconduct if that accounting officer or accounting authority makes or permits irregular expenditure.
13. Similarly, section 81(2) and 83(3) of the PFMA provides that officials serving in the institutions referred to in paragraph 3 above shall commit an act of financial misconduct if he or she fails to take effective and appropriate steps to prevent irregular expenditure within that official's area of responsibility as required in terms of section 45(c) and section 57(c) of the PFMA.
14. In terms of sections 38(1)(h)(iii) and 51(1)(e)(iii) of the PFMA, the accounting officer or accounting authority must take effective and appropriate disciplinary steps against any official in the service of their respective institutions who makes or permits irregular expenditure.
15. Treasury Regulation 4.1.3 provides that, if an accounting officer is alleged to have committed financial misconduct, the relevant treasury, must, as soon as it becomes aware of the alleged misconduct, ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts and agreements applicable in the public service.
16. Similarly, if an accounting authority or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately as required by the Treasury Regulation 33.1.3.

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### UNAUTHORISED EXPENDITURE<sup>4</sup> VERSUS IRREGULAR EXPENDITURE

#### Departments

17. If a department or a government component incurs expenditure that contravenes any applicable legislation as indicated in paragraph 8 above, this expenditure meets the definition of irregular expenditure and must be classified as such.
18. Should the irregular expenditure in paragraph 17 above relate to an expenditure being incurred not in accordance with the purpose of the main division/vote or which results in the overspending of the main division/vote, such expenditure also meets the definition of unauthorised expenditure.
19. Transactions such as those indicated in paragraphs 17 and 18 above may not both be recognised as irregular expenditure and unauthorised expenditure. Considering that irregular expenditure is defined as expenditure other than unauthorised expenditure, this means that unauthorised expenditure shall take precedence over irregular expenditure.

#### Public Entities listed in Schedules 3A and 3C to the PFMA

20. In terms of section 53(4) of the PFMA, the accounting authority of a national or a provincial public entity listed in Schedule 3A and 3C to the PFMA is responsible for ensuring that expenditure of that public entity is in accordance with the approved budget of the institution.
21. If a public entity referred to in paragraph 20 above incurred<sup>5</sup> expenditure that contravenes the provision of section 53(4) of the PFMA, it must be indicated that such a public entity has spent not in accordance with its approved budget and the non-compliance linked to the transaction, condition or event that lead to such a spending must be recognised as irregular expenditure. In this case, the amount to be disclosed as irregular expenditure will be the excess amount over the approved budget.
22. Based on the aforementioned, it is clear that even though public entities listed in schedules 3A and 3C to the PFMA will not incur unauthorised expenditure when they overspend on their respective budgets, such an overspending must be recognised as irregular expenditure in the notes to the financial statements.

### ACCOUNTING POLICY FOR IRREGULAR EXPENDITURE

23. The following is the recommended accounting policy for irregular expenditure:

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<sup>4</sup> Unauthorised expenditure is a concept that is only applicable to departments.

<sup>5</sup> Expenditure is incurred when the expenditure linked to the transaction, condition or event is recognised in the Statement of Financial Performance.

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*“Irregular expenditure is recorded in the notes to the financial statements when confirmed. The amount recorded is equal to the value of the irregular expenditure incurred, unless it is impractical to determine, in which case reasons therefore must be provided in the notes.”*

*“Irregular expenditure receivables are measured at the amount that is expected to be recovered and are de-recognised when settled or written-off as irrecoverable.”*

24. *Irregular expenditure must be removed from the balance of the irregular expenditure notes when it is either*
- (a) *condoned by the relevant authority if no official was found to be liable in law;*
  - (b) *recovered from an official liable in law;*
  - (c) *written-off<sup>6</sup> if it's irrecoverable from an official liable in law; or*
  - (d) *written-off<sup>7</sup> if it's not condoned and not recoverable.*
25. In line with paragraph 24(d) above, irregular expenditure that is not recoverable because no official was found to be liable in law for such a transgression and was also not condoned by the relevant authority must be de-recognised in the balance of the irregular expenditure note. The accounting officer or accounting authority must only de-recognise the irregular expenditure referred to in paragraph 24(d) above when he or she is satisfied that:
- (a) reasonable steps have been taken to confirm that such irregular expenditure did not result in any loss or damages to the state and that the state did obtain value from such a transaction, condition or event;
  - (b) the non-compliance that lead to the irregular expenditure is being addressed; and
  - (c) transactions, conditions or events of a similar nature are regularly reviewed to ensure that there are no possible future non-compliance cases reported.
26. The accounting officer or accounting authority may proceed with the “write-off” of the irregular expenditure after confirmation of the controls indicated in paragraph 25 above have been met and by informing the relevant delegated official in writing to de-recognise the irregular expenditure in the notes to the financial statements.

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<sup>6</sup> Debt is written off “against savings” if an official was found to be liable in law and a debtor was recorded for the recovery of such a debt.

<sup>7</sup> Irregular expenditure is “NOT written off against savings” but de-recognised from the balance of the irregular expenditure in the notes to the annual financial statements if an official of the institution was not found liable in law for the transgression.



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## PROCEDURES FOR THE TREATMENT OF IRREGULAR EXPENDITURE

### 27. Procedures for the discovery, investigation and reporting of irregular expenditure

#### 27.1. Discovery of irregular expenditure

- (a) In terms of Treasury Regulations 9.1.2, an employee of a department, a trading entity, a government component or a constitutional institution who becomes aware of or suspects the occurrence of irregular expenditure must immediately, in writing, report such expenditure to the accounting officer of their respective institution. An employee of a public entity who becomes aware of or suspects the occurrence of irregular expenditure must report such irregular expenditure in line with the policy of the public entity.
- (b) The accounting officer or accounting authority must record the details of the transgression in the irregular expenditure register on discovery of any alleged irregular expenditure and ensure that the relevant supporting documentation are available for audit purposes.

#### 27.2. Enquiry or investigation into the alleged irregular expenditure

- (a) The accounting officer or accounting authority or his/her delegate must decide on the level of enquiry/investigation to be undertaken to determine whether:
  - (i) the expenditure in question meets the definition of irregular expenditure;
  - (ii) there is any official liable in law for the irregular expenditure;
  - (iii) the amount of the irregular expenditure resulted in any losses or damages suffered by the state; or
  - (iv) the state did not attain value for money from the transaction, condition or event.
- (b) During the period of enquiry or investigation, the expenditure must remain in the expense account. The results of the enquiry or investigation will determine the appropriate action to be taken regarding the transgression.

#### 27.3. Confirmation and reporting of irregular expenditure

- (a) Should the enquiry or the investigation reveal that the expenditure does not constitute irregular expenditure, the details of the alleged irregular expenditure and the relevant supporting documentation to substantiate the finding should be retained in the register for purposes of completeness (and to provide for an appropriate audit trail). The register must also be updated to reflect the outcome of the enquiry or investigation.
- (b) If the enquiry or investigation indicates that the expenditure is in fact irregular expenditure, the accounting officer must immediately report, in writing the

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particulars of the irregular expenditure to the relevant authority as indicated in the paragraphs below.

- (i) report the irregular expenditure in terms of section 38(1)(g) of the PFMA to the relevant treasury;
  - (ii) report the irregular expenditure in the monthly report on revenue and expenditure in terms of section 40(4)(b) of the PFMA to the relevant treasury; and
  - (iii) report the irregular expenditure incurred by a department in contravention of tender procedures as required by Treasury Regulation 9.1.2 to the relevant procurement authority.
- (c) In terms of section 55(2)(b)(ii) of the PFMA, the accounting authority of a public entity must include particulars of any criminal or disciplinary steps taken as a consequence of such irregular expenditure in the annual report and financial statements for that financial year.

### 28. Procedures for raising a receivable (debtor)<sup>8</sup> and the recovery of irregular expenditure

#### 28.1 Recovery of irregular expenditure

- (a) The accounting officer or accounting authority must in terms of section 38(1)(c)(i) and 51(1)(b)(i) of the PFMA, take effective and appropriate steps to collect all money due to the institution, hence every effort must be taken to recover the irregular expenditure if the state has suffered a loss or a damage and that no value for money was attained by the institution from the transaction, condition or event.
- (b) In terms of the Treasury Regulation 9.1.4, the recovery of losses or damages resulting from irregular expenditure of departments, trading entities, constitutional institutions and government components must be dealt with in accordance with Regulations 12, whilst the accounting authority of a public entity will recover such losses or damages resulting from irregular expenditure in line with their respective policy.

#### 28.2 Determination of an official liable in law

- (a) The accounting officer or accounting authority must determine who the responsible official is from whom the amount should be recovered and whether

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<sup>8</sup> Receivables comprise of amounts due to the state as a result of irregular expenditure resulting from losses or damages, or the sales of goods, the provision of services or the recovery of expenditure incurred by the state.

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there were losses or damages suffered by the state. This information would normally become evident while performing the investigation.

- (b) If an enquiry or investigation into the irregular expenditure confirms that there is an official liable in law for the irregular expenditure, the accounting officer or accounting authority must conduct a hearing based on the supporting documentation gathered during the enquiry or the investigation to provide the person alleged to have committed irregular expenditure with an opportunity to respond to the evidence tabled against him or her.
- (c) Based on the outcome of the hearing referred to in paragraph 28.2 (b) above, the accounting officer or accounting authority will either:
  - (i) raise a receivable (debt) for the recovery of the relevant amount of irregular expenditure resulting from losses or damages suffered by the state; or
  - (ii) consider applying for condonation of the irregular expenditure from the relevant authority if it was found that no official is liable in law and that no losses or damages were suffered by the state;

### **28.3 Confirmation of a person liable in law**

- (a) The accounting officer or accounting authority must in writing request that the responsible official pay the amount within 30 days or in reasonable installments. If the official who is still in the employ of the institution denies liability, the accounting officer may refer the matter to the state attorney and the accounting authority may refer the matter to their in-house legal division for legal action, including the recovery of the debt.
- (b) In line with the Treasury Regulation 12.7.2, if an official that was found to be liable in law for the irregular expenditure has left the employ of the institution and the institution suffered a loss or damage as a result of the irregular expenditure will warrant for the accounting officer if considered economical, to refer the matter to the State Attorney for legal action, including the recovery of the debt. The accounting authority of a public entity will follow similar process in line with their respective policies.
- (c) If the amount of the irregular expenditure is irrecoverable from an official who is liable in law<sup>9</sup> and the state has suffered a loss or damage, the accounting officer may write off the debt in terms of Treasury Regulation 11.4. The accounting authority may perform similar actions in terms of the public entity's debt write off policy.

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<sup>9</sup> **An official who is liable in law means** a legal responsibility of an official's acts or omissions

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- (d) In terms of paragraph 15 and 16 above, if the irregular expenditure that resulted in losses or damages to the state was incurred by the accounting officer or accounting authority, the relevant treasury will be the authority to condone the receivable that if it is discovered that it is irrecoverable.

### **28.4 Irregular expenditure written off**

- (a) The accounting officer or accounting authority may grant approval for the irregular expenditure to be de-recognised were no official was found liable in law and that such irregular expenditure was not condoned by the relevant authority.
- (b) The relevant supporting documentation to substantiate actions and decisions taken by the accounting officer or accounting authority in terms of paragraph 28.4 (a) above must be available for audit purposes.

### **29. Procedures for the condonation of irregular expenditure**

- (a) As part of the enclosed procedures, provision is made for the accounting officer or accounting authority to forward submissions to the relevant authority to request condonation of irregular expenditure.
- (b) Such condonation request referred to in paragraph 29(a) above will be submitted to the relevant authority if the enquiry/investigation reveals that no official is liable in law for the irregular expenditure and that the state did not suffer any loss or damage as a result of the irregular expenditure incurred.
- (c) The relevant authority to which the submission must be forwarded to will depend on the provision of the PFMA or other relevant legislation that was contravened. It must, however, be emphasised that submissions requesting condonation of irregular expenditure must at least contain the following:
  - (i) evidence<sup>10</sup> indicating that the enquiry/investigation revealed that no official is liable in law for the irregular expenditure;
  - (ii) detailed motivation as to why the irregular expenditure in question should be considered for condonation;
  - (iii) details of the transgression;
  - (iv) reference to relevant legislation;
  - (v) reason(s) for deviating from the required legislation or prescripts;
  - (vi) whether the state suffered any loss due to the transgression;

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<sup>10</sup> This evidence may be in a form of a letter approved by the accounting officer, accounting authority or a duly authorized official or a copy of the enquiry/investigation report.

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- (vii) in the case of supply chain management transgressions provide reasonableness of price(s) determined in a case where only one price was sourced from one bidder;
  - (viii) financial implications for such a transgression;
  - (ix) in the case of a supply chain management transgression provide contractor(s) who were involved;
  - (x) corrective steps taken to prevent any recurrence; and
  - (xi) the relevant supporting documentation.
- (d) If the irregular expenditure is subsequently condoned, the register must be updated to reflect that the irregular expenditure was condoned, the notes to the annual financial statements must also be updated to reflect the condoned irregular expenditure and the relevant supporting documentation must be kept for audit purposes.
30. The below **Annexure B** illustrates a step by step process to the treatment of irregular expenditure, whilst **Annexure C** indicates the accounting framework for irregular expenditure.
31. Furthermore, the below **Annexure D** illustrates procedures for the treatment of irregular expenditure by departments, trading entities, government components and constitutional institutions whilst **Annexure E** illustrates procedures to be followed by public entities and **Annexure F** indicates a template for the irregular expenditure register.

### RELEVANT AUTHORITY

32. For purposes of condoning irregular expenditure, the relevant authority is “the person or institution whose approval would have been required prior to entering into that transaction or incurring such expenditure or the institution responsible for the relevant legislation”.
33. Where the accounting authority of a public entity consists of a board, such authority may delegate the power to condone irregular expenditure to the next lower level of authority within the public entity, for example, Chief Executive Officer.

### DELEGATIONS OF AUTHORITY

34. Expenditure resulting from non-adherence to an institution’s delegations of authority shall be regarded as irregular expenditure since such delegations are issued in terms of section 44 and 56 of the PFMA for departments, constitutional institutions, trading entities and public entities respectively.

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### EXAMPLES OF IRREGULAR EXPENDITURE

35. The table below provides examples of irregular expenditure and the relevant authority that is empowered to condone such expenditure:

Categories of irregular expenditure	Relevant Authority
Irregular expenditure incurred as a result of non-compliance with a Treasury Regulation where prior written approval was required from a <b>relevant treasury</b> . For example, a department, trading entity, constitutional institution or public entity that incurred expenditure related to a public private partnership without obtaining the <b>prior written approval of the relevant treasury</b> , as required by Treasury Regulation 16.4.2.	<b>The National Treasury</b> , in the case of national departments, trading entities, constitutional institutions and national public entities and the <b>relevant provincial treasury</b> in the case of provincial departments or provincial public entities.
Irregular expenditure incurred as a result of non-compliance with a Treasury Regulation which required cognisance to be taken of a National Treasury determination. For example, a department, trading entity, constitutional institution or public entity procured goods or services by means of price quotations where the value of the purchase exceeded the threshold values <b>determined by the National Treasury</b> for price quotations. (Contravention of Treasury Regulation 16A6.1)	<b>The National Treasury</b> , in cases of <b>all</b> departments, trading entities, constitutional institutions and public entities.
Irregular expenditure incurred as a result of institutions procuring goods or services by means other than through competitive bids and where reasons for deviating from inviting competitive bids have not been recorded and approved by the functionary to whom the power has been delegated by the accounting officer or accounting authority. (Contravention of Treasury Regulation 16A6.4)	The <b>Accounting Officer</b> . in cases of <b>all</b> departments, trading entities and constitutional institutions and in the case of public entities, the <b>Accounting Authority</b> .
Irregular expenditure incurred as a result of non-compliance with a requirement of the institution's delegations of authority issued in terms of the PFMA. For example: An official approves purchase of goods to the value of R35 000 however his limit in terms of delegation of authority is R30 000.	The <b>Accounting Officer</b> , in cases of all departments, trading entities or constitutional institutions and in the case of public entities, the <b>Accounting Authority</b> .
Irregular expenditure incurred as a result of non-compliance with a provision contained in any applicable legislation. For example, a department grants performance rewards to personnel without maintaining and implementing a Performance Management and Development System, as required by Part VIII B of the Public Service Regulations).	The Department responsible for the legislation concerned and in the case of this example, the Department of Public Service and Administration.

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36. From the above table it is clear that in certain instances, the accounting officer or accounting authority has the power to condone irregular expenditure that was incurred as a result of transgressions by their respective officials.
37. If, however, the accounting officer or accounting authority is responsible for the transgression, only the relevant treasury may condone such a transgression.
38. The accounting policy of irregular expenditure as referred to in paragraph 23 and paragraph 24 of this guideline provides that “the amount to be recorded in the notes to the financial statements must be equal to the value of the irregular expenditure incurred”. Therefore if a department incurred irregular expenditure, the amount of the irregular expenditure to be recorded will be equal to the amount of invoices paid by the department. The entire contract amount should not be recorded as irregular expenditure as irregular expenditure will only be recorded as being incurred at a point of payment.
39. Due to the different accounting policy of irregular expenditure followed by departments and public entities, a public entity must record the extent of the expenditure recorded in relation to the contractual liability that has been recorded in the statement of financial position.
40. In terms of the Treasury Regulation 4.1.3, if the accounting officer has incurred irregular expenditure that has resulted in a state suffering a loss or a damage, the relevant treasury as soon as it becomes aware of the alleged irregular expenditure, must ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts applicable and agreements applicable in the public service.
41. The Treasury Regulation 33.1.3 provides that, if the accounting authority has incurred irregular expenditure that has resulted in a state suffering a loss or damage, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately.

### **RECORDING IN THE IRREGULAR EXPENDITURE REGISTER**

42. Accounting officers and accounting authorities must maintain an irregular expenditure register which must contain a detailed schedule for each financial year listing all irregular expenditure incurred by their respective institutions. An example of an irregular expenditure register is contained in the enclosed **Annexure F**.
43. Prior to institutions recording expenditure as irregular, a process must be instituted to ensure that the expenditure in question falls within the definition of irregular expenditure, as provided in section 1 of the PFMA.

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44. If in doubt, the accounting officer or accounting authority must consult the relevant treasury for guidance on the interpretation of the definition of irregular expenditure.
45. The irregular expenditure register must be kept up to date in order to track all the alleged and confirmed irregular expenditure for the purposes of maintaining an audit trail. This will also assist in ensuring that the irregular expenditure note in the annual financial statements is accurate and complete.

### **RECORDING OF IRREGULAR EXPENDITURE IN THE ANNUAL FINANCIAL STATEMENTS**


46. Accounting officers and accounting authorities are encouraged to conclude on enquiries or investigations conducted in relation to irregular expenditure within 30 days from the date on which the alleged irregular expenditure was discovered or as soon as practically possible as required by the Treasury Regulation 4.1.2 and 33.1.2 respectively. If such enquiries or investigations are not concluded by the date on which the annual financial statements are published, a narrative to this effect must be included in the irregular expenditure register.
47. The accounting officer or accounting authority must ensure that the validity of irregular expenditure is confirmed before the annual financial statements are submitted for audit purposes. If irregular expenditure occurred during the year under review and is only discovered during the audit, the validity thereof must be confirmed before the audit is finalised. If an investigation is still in progress after the audit is completed then a narrative to this effect should be included in the irregular expenditure register.
48. Treasury Regulations 9.1.5 and 28.2.1 require accounting officers and accounting authorities to disclose all irregular expenditure incurred by their respective institutions as a note to the annual financial statements which must include particulars of amounts condoned by the relevant authority in the same financial year and/or before finalisation of financial statements.
49. The disclosure of irregular expenditure incurred is a legal requirement rather than an accounting requirement. It is the act that results in irregular expenditure that is of importance to the user of the financial statements. The amount does not add to its significance and focusing on the quantification of irregular expenditure, while it is important, may divert attention away from the act itself. The primary focus from an oversight perspective is ensuring that spending agencies abide by the law in executing their mandates.
50. The Modified Cash Standard provides for the annual financial statements disclosure requirements for departments and government components operating on a modified cash basis of accounting. The annual financial statements template must be used to complement the Modified Cash Standard and provide for a format in which the disclosure requirements of irregular expenditure must be presented in the annual





## GUIDELINE ON IRREGULAR EXPENDITURE

financial statements and related notes. The annual financial statements template must be used for disclosure requirements of irregular expenditure for government components operating on an accrual basis of accounting, trading entities, constitutional institutions and public entities.



51. Irregular expenditure that was incurred and identified during the current financial year and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is required with the exception of updating the note to the financial statements.
52. In line with the Treasury Regulation 12.5.1, it is acknowledged that there may be instances where the irregular expenditure arose from fraudulent, corrupt and criminal activities or through actions that deprived the state of value for money and may result in the state suffering a loss or damages which may prompt the state to institute a civil claim against a third party and report the matter, in writing, to the accounting officer and the South Africa Police Service.
53. In such cases the accounting officer would have to evaluate the impact of the infraction and the likelihood of someone being liable in law. The extent of the liability would thus have to be established. If the total amount could not be established by the date of approval for issue of the annual financial statements, the sub-notes must disclose this fact along with the reasons why.
54. The accounting officer or accounting authority must quantify the total amount of irregular expenditure unless it is impractical to do so. When the institution can demonstrate that it is impractical to quantify the full amount, it should disclose this fact along with the reasons why.
55. The table below provides a process to be followed in relation to the disclosure of irregular expenditure identified in current and previous financial periods.

Description	Transgression took place in the <u>current</u> financial year	Transgression took place in a <u>previous</u> financial year
Suspected irregular expenditure identified and in the process of enquiry/investigation for it to be confirmed  	No disclosure in the irregular expenditure note	No disclosure in the irregular expenditure note

## GUIDELINE ON IRREGULAR EXPENDITURE

Description	Transgression took place in the <u>current</u> financial year	Transgression took place in a <u>previous</u> financial year
<p>Alleged transaction, event or condition was confirmed as irregular expenditure and further investigated to determine the nature, extent and root cause of the transgression (where for example the institution is in the process of establishing whether this is isolated).  </p>	<p>Disclose amount of irregular expenditure confirmed and note that further instances (the extent) of this type of irregular expenditure are under investigation.</p> <p>Continue with process as described below.</p>	<p>Disclose amount of irregular expenditure confirmed and note that further instances (the extent) of this type of irregular expenditure are under investigation.</p> <p>Continue with process as described below.</p>
<p>Institute a process to identify any fraudulent, corrupt and criminal activities or actions that deprived the state of value for money and may result in the state instituting a civil claim against a third party.  </p>	<p>If confirmed criminal activities etc.:</p> <ul style="list-style-type: none"> <li>• follow relevant steps required in chapter 4, 9 and 12 of the Treasury Regulations (for depts., constitutional institutions and trading entities);</li> <li>• report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act, 2003;</li> <li>• determine amount paid in current financial year;</li> <li>• disclose amount in the main note as “irregular expenditure - relating to current year”;</li> <li>• include supplementary disclosure on the disciplinary steps taken/criminal proceedings instituted.</li> </ul>	<p>If confirmed criminal activities etc.:</p> <ul style="list-style-type: none"> <li>• follow relevant steps required in chapter 4, 9 and 12 of the Treasury Regulations (for depts., constitutional institutions and trading entities);</li> <li>• report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act, 2003;</li> <li>• determine amount paid from date of transgression to end of reporting period;</li> <li>• disclose amount in the main note as “irregular expenditure – relating to prior year”;</li> <li>• include supplementary disclosure on the disciplinary steps taken/criminal proceedings instituted.</li> </ul>

## GUIDELINE ON IRREGULAR EXPENDITURE

Description	Transgression took place in the <u>current</u> financial year	Transgression took place in a <u>previous</u> financial year
<p>Confirmation that the irregular expenditure was not the result of fraudulent, corrupt and criminal activities or actions that deprived the state of value for money that may result in the state instituting a civil claim against a third party.</p>	<p>If not confirmed by the date on which the financial statements are authorised for issue:</p> <ul style="list-style-type: none"> <li>• follow the process below and disclose the fact that further investigations are still underway;</li> </ul> <div style="text-align: center; margin: 10px 0;">  </div> <ul style="list-style-type: none"> <li>• follow relevant steps required in chapter 4, 9 and 12 of the Treasury Regulations (for depts., constitutional institutions and trading entities) and Treasury Regulations 33 for public entities</li> <li>• determine amount paid and disclose amount in the main note as “irregular expenditure - relating to current year”;</li> <li>• if can demonstrate that it is impractical to determine the total irregular expenditure, disclose details of transgression and reasons why the amount cannot be quantified.</li> </ul>	<p>If not confirmed by the date on which the financial statements are authorised for issue:</p> <ul style="list-style-type: none"> <li>• follow the process below and disclose the fact that further investigations are still underway</li> <li>• if not confirmed in a subsequent financial period, the full amount must be quantified and disclosed as above</li> </ul> <div style="text-align: center; margin: 10px 0;">  </div> <ul style="list-style-type: none"> <li>• required in chapter 4, 9 and 12 of the Treasury Regulations (for depts., constitutional institutions and trading entities) and Treasury Regulations 33 for public entities</li> <li>• determine amount paid from date of transgression to end of reporting period and disclose amount in the main note as “irregular expenditure – relating to prior year”;</li> <li>• if can demonstrate that it is impractical to estimate the total irregular expenditure, disclose details of transgression and reasons why the amount cannot be</li> </ul>

### CONTRACTS ARRANGED BY OTHER INSTITUTIONS

56. Irregular expenditure is defined as expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any relevant legislation.

## GUIDELINE ON IRREGULAR EXPENDITURE

57. In line with paragraph 56 above, for an institution to disclose irregular expenditure, there must first be a transgression of the law and secondly there must be expenditure recognised in the books of an institution. When non-compliance has been identified in a contract arranged by other institutions, to determine where the irregular expenditure must be disclosed, the first aspect is to determine the line item of the expenditure from the Statement of Financial Performance where the irregular expenditure is incurred.
58. This can be applied to different aspects where contracts of departments, government components, trading entities, constitutional institutions and public entities are arranged by other institutions as follows:

### **National Government**

#### **58.1 Lease contracts arranged by the Property Management Trading Entity (PMTE)**

- (i) If a lease contract is arranged by the Property Management Trading Entity (PMTE) and expenditure on such lease is incurred and recognised by the Property Management Trading Entity (PMTE), any non-compliance on such lease contracts which constitutes irregular expenditure will be disclosed in the register and the notes to the annual financial statements of the Property Management Trading Entity (PMTE).

#### **58.2 Construction contracts arranged by the Property Management Trading Entity (PMTE)**

- (i) If a construction contract is arranged by the Property Management Trading Entity (PMTE) and expenditure on such construction contract is incurred and recognised by the Property Management Trading Entity (PMTE), any non-compliance on such contracts which constitute irregular expenditure will be disclosed in the register and the notes to the annual financial statements of the Property Management Trading Entity (PMTE).

### **Provincial Government**

#### **58.3 Lease contracts arranged by the Provincial Department of Public Works**

- (i) If a lease contract is arranged by the Provincial Department of Public Works and expenditure on such lease is incurred and recognised by the client, any irregular expenditure emanating from such a lease contract will be disclosed in the register and the notes to the annual financial statements of the client.
- (ii) However, if expenditure on such lease is incurred and recognised by the Provincial Department of Public Works, any irregular expenditure

## GUIDELINE ON IRREGULAR EXPENDITURE

emanating from such a lease contract will be disclosed in the register and the notes to the annual financial statements of the Provincial Department of Public Works.

### **58.4 Construction contracts arranged by the provincial Department of Public Works**

- (i) If a construction contract is arranged by the Provincial Department of Public Works and payment on such a construction contract is effected by the client demonstrates that any irregular expenditure emanating from such a construction contract will be disclosed in the register and the notes to the annual financial statements of the client.
- (iii) However, if payment on a construction contract is effected by the Provincial Department of Public Works on behalf of the client demonstrates that any irregular expenditure emanating from such a construction contract will be disclosed in the register and the notes to the annual financial statements of the Provincial Department of Public Works.

### **National and provincial government**

- 59. Where institutions are mandated in terms of the law to make use of other organs of state to procure goods and/or services, the institution receiving the goods and/or services must, **where possible**, ensure that it has supply chain management representatives on the mandated institution's bid committee to confirm that appropriate supply chain management procedures have been followed.
- 60. If supply chain management transgressions are identified in the procurement processes of the mandated institution, the supply chain management representatives of the institution that is going to receive the goods and/or services must immediately inform the accounting officer or accounting authority of the institution that he or she represents.
- 61. In line with paragraphs 59 and 60 above, the procuring institutions (Client) must always be represented in the bid committees of the mandated institutions for the procurement goods or services procured on their behalf, unless there are justifiable reasons for not being represented in the bid committees and such reasons must be in writing. This can further be explained as follows:

### **Transversal term contracts arranged by Treasury or State Information Technology Agency (SITA)**

#### **61.1 Institutions that are not represented in the Bid Committees**

- (i) Institutions (client) that are not represented in the bid committees will not bear any irregular expenditure emanating from transgressions with the laws and regulations.

## GUIDELINE ON IRREGULAR EXPENDITURE

(ii) **Disclosure of irregular expenditure**

<i>Agent (Mandated Institution)</i>	<i>Client (Procuring Institution)</i>
Non-compliance	No disclosure

**61.2 Institutions that are represented in the Bid Committees**

(i) Institutions that are represented in the bid committees of the mandated institution will record the irregular expenditure in the registers and notes to their annual financial statements if there were any non-compliance matters with the laws and regulations emanating from such transversal contracts.

(ii) The amount of the irregular expenditure to be disclosed must relate to the portion of the procurement costs of the institution (Client) that was represented in the bid committee.

(iii) **Disclosure of irregular expenditure**

<i>Agent (Mandated Institution)</i>	<i>Client (Procuring Institution)</i>
Non-Compliance	Irregular-Expenditure

**61.3 Contracts which are specific to the procuring institution (Client)**

(i) Paragraph 13 of the State Information Technology Agency (SITA) regulation and paragraph 4.2.2 of practice note 5 of 2009/2010 requires a procuring institution (client) to be involved in the bid evaluation process and make recommendations for the award to the Recommendation Committee including the identification of all risks associated with the recommendation and the rating of all the risks.

(ii) Any irregular expenditure emanating from such specific contracts must be recorded in the registers and the notes to the annual financial statements of the procuring institutions (client).

(iii) **Disclosure of irregular expenditure**

<i>Agent (Mandated Institution)</i>	<i>Client (Procuring Institution)</i>
No disclosure	Irregular expenditure

## GUIDELINE ON IRREGULAR EXPENDITURE

### **61.4 Other contracts which are specific to the procuring institution (Client) including capital projects performed through the Department of Public Works, Independent Development Trust and other Mandated Institutions**

- (i) Such institutions must be represented in the bid committees of the mandated institutions and any irregular expenditure emanating from such contracts will be recorded in the register and notes to the annual financial statements of the procuring institutions (Client).
- (ii) **Disclosure of irregular expenditure**

<i>Agent (Mandated Institution)</i>	<i>Client (Procuring Institution)</i>
No disclosure	Irregular expenditure

## GUIDELINE ON IRREGULAR EXPENDITURE

### **STATUS OF THE TENDER BOARD ACT, 1968**

### **ANNEXURE A**

1. The State Tender Board Act, 1968 (Act No. 86 of 1968) establishes the State Tender Board and provides, among others, for regulating the procurement of goods and services of national departments, for the disposal of movable property and the hiring or letting of anything. Provinces had similar legislation that established Provincial Tender Boards and which offered matters similar to those provided for in State Tender Board Act, 1968.
2. It must be noted that in section 1 of the PFMA, irregular expenditure is also deemed to have occurred if there was contravention of the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act.
3. In December 2003, the National Treasury issued a Supply Chain Management Framework in terms of section 76(4)(c) of the PFMA. This Framework was published in Government Gazette No. 25767 dated 5 December 2003 and took effect from the same date.
4. In essence, the aforementioned Framework provides that accounting officers and accounting authorities of Schedule 3A and 3C public entities must develop and implement effective and efficient systems of supply chain management and to establish separate supply chain management units reporting to their respective chief financial officers.
5. Prior to this Framework taking effect, all national and provincial departments arranged for the procurement of their goods and services in terms of legislation that established their respective Tender Boards.
6. After this Framework took effect, all Provinces repealed legislation that established their respective Provincial Tender Boards and which also determined the manner in which their supplies (goods) and services were procured.
7. When the Supply Chain Management Framework took effect, it was recognised that the State Tender Board Act, 1968 (Act No. 86 of 1968) provided that national departments were only to procure their supplies for goods and services through the State Tender Board. This in effect was in conflict with provisions of the Supply Chain Management Framework, which required departments to procure their goods and services either through the State Tender Board or in terms of the PFMA.
8. On 5 December 2003, the Minister of Finance therefore published an amendment to regulations in terms of section 13 of the State Tender Board Act, 1968 (Act No. 86 of 1968) which essentially allowed for accounting officers of national departments to procure their goods and services either through the State Tender Board or by using the provisions contained in the Supply Chain Management Framework.



## GUIDELINE ON IRREGULAR EXPENDITURE

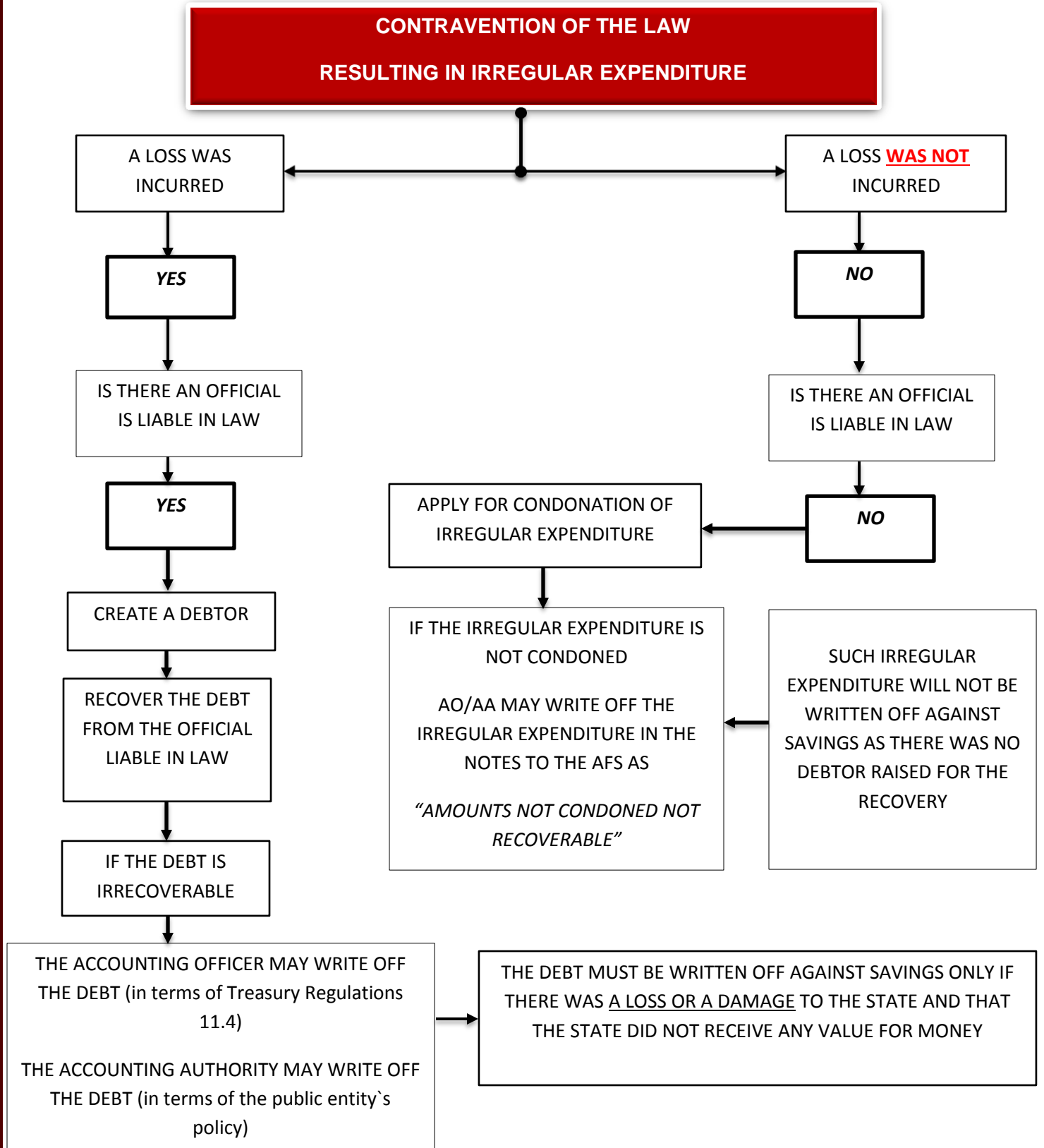
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9. The amendment to the State Tender Board Act Regulations is consistent with the ethos of the PFMA which empowers accounting officers to manage but be held accountable for all expenditure incurred by their respective departments.
10. Whilst the above amendment provides for a 'dual system' of procurement, the State Tender Board at the national level of government has since been **disbanded** and it is the intention to repeal the currently dormant State Tender Board Act, 1968 (Act No. 86 of 1968) when amendments are effected to the PFMA.

# GUIDELINE ON IRREGULAR EXPENDITURE

## STEP BY STEP TREATMENT OF IRREGULAR EXPENDITURE

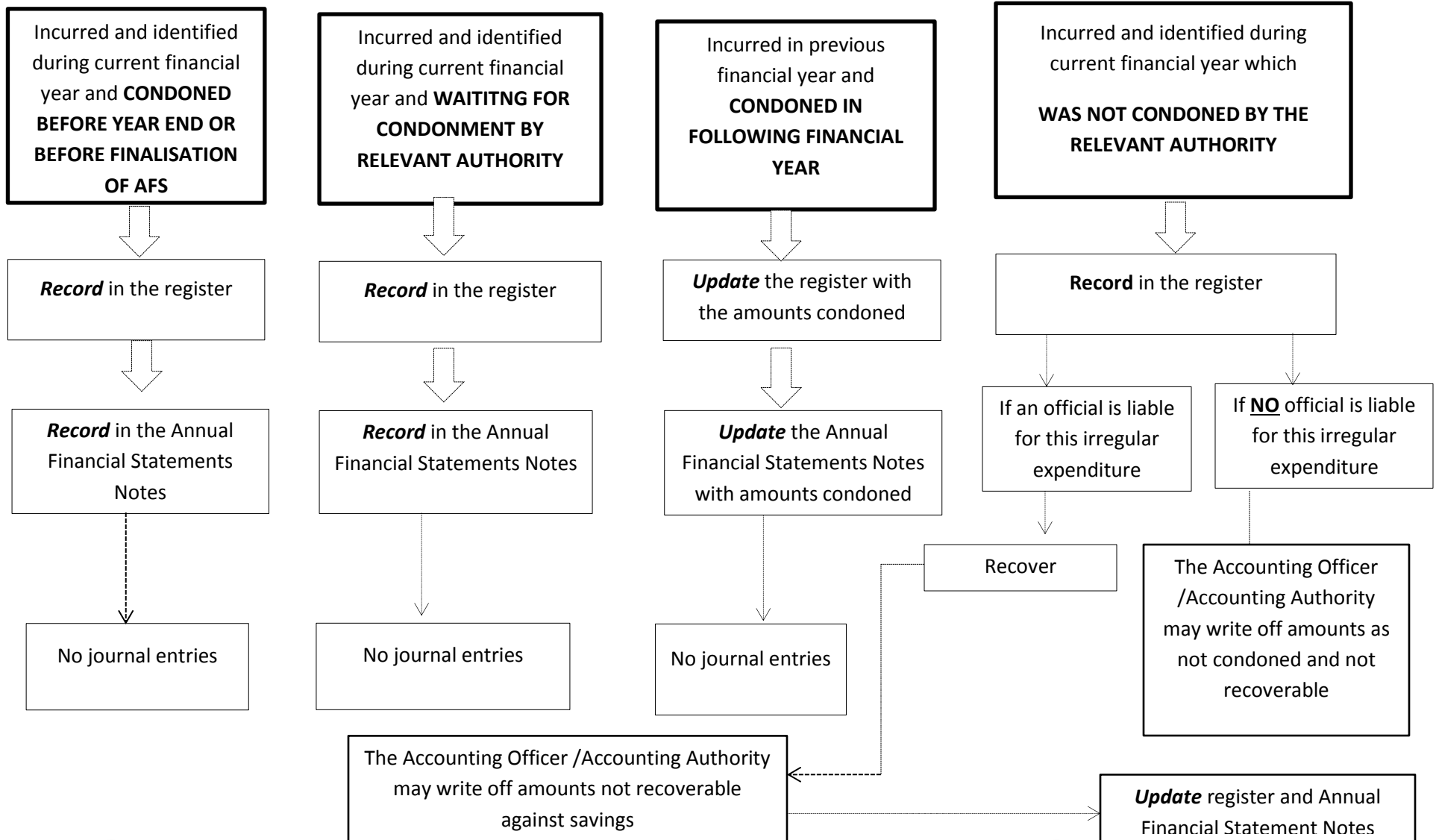
## ANNEXURE B



# GUIDELINE ON IRREGULAR EXPENDITURE

## ACCOUNTING FOR IRREGULAR EXPENDITURE

## ANNEXURE C



# GUIDELINE ON IRREGULAR EXPENDITURE

## PROCEDURE FOR THE TREATMENT OF IRREGULAR EXPENDITURE

## ANNEXURE D

### DEPARTMENTS, GOVERNMENT COMPONENTS, TRADING ENTITIES AND CONSTITUTIONAL INSTITUTIONS

Irregular expenditure discovered by the Accounting Officer (AO) and the Auditor - General.

The AO must perform an investigation/enquiry to confirm the IE, official liable in law, amounts involved and if the state suffered any loss or damage

After the investigation/enquiry, the AO must immediately report in writing the irregular expenditure to the relevant treasury in terms of sec 38(1) (g) and in the case of a department, report the irregular expenditure in terms of Treasury Regulation 9.1.2 in the monthly report as required in terms of section 40(4)(b).

If the investigation reveals that there is an official liable in law for the irregular expenditure

The AO must raise a debt for the recovery of the IE, section 38(1)(c)(i) and institute disciplinary steps against that official in terms of section 38(1)(h)(iii)

If the debt is irrecoverable, then the AO may write off the IE in terms of Treasury regulation 11.4

If the investigation reveals that there is no official liable in law for the irregular expenditure

Then the AO may apply for condonation of irregular expenditure from the relevant authority

If the Irregular expenditure is not condoned by the relevant authority, then the AO may write off the IE by derecognizing from amounts not condoned not recoverable

# GUIDELINE ON IRREGULAR EXPENDITURE

## **PROCEDURE FOR THE TREATMENT OF IRREGULAR EXPENDITURE ANNEXURE E**

### **PUBLIC ENTITIES**

Irregular expenditure discovered by the Accounting Authority (AA) and the Auditor - General.

The AA must perform an investigation/enquiry to confirm the IE, official liable in law, amounts involved and if the state suffered any loss or damage

After the investigation/enquiry, the AA must report the irregular expenditure in line with the entities policies and include particulars of any criminal or disciplinary steps taken as a consequence of such irregular expenditure in the annual report and financial statements for that financial year.

If the investigation reveals that there is an official liable in law for the irregular expenditure

The AA must raise a debt for the recovery of the IE section 51(1)(b)(i) and institute disciplinary steps against that official in terms of section 51(1)(e)(iii)

If the debt is irrecoverable, then the AA may write off the IE in terms of the public entity's policy

If the investigation reveals that there is no official liable in law for the irregular expenditure

Then the AA may apply for condonation of irregular expenditure from the relevant authority

If the Irregular expenditure is not condoned by the relevant authority, then the AA may write off the IE by derecognizing it in the notes to the financial statements from amounts not condoned not recoverable

# GUIDELINE ON IRREGULAR EXPENDITURE

## REGISTER OF IRREGULAR EXPENDITURE (EXAMPLE ONLY)

## ANNEXURE F

No	Date of discovery	Date Reported to AO or AA	Transaction details				Official liable in law for the irregular expenditure (IF applicable)	STATUS										
			Date of Payment	Payment Number	Amount Involved	Description of Incident		UI	C	DP	CC	TR	WO	CO	NCO	General comments		

**Abbreviations:**

- UI:** Irregular expenditure currently under investigation;
- C:** Irregular expenditure confirmed;
- DP:** Disciplinary process initiated against responsible person;
- CC:** Criminal charges laid with SAPS were applicable;
- TR:** Transferred to receivables for recovery if there is an official liable; or
- WO:** Written-off against savings (a debt was created as *there is* an official liable in law).
- CO:** Condoned by the relevant authority
- NCO:** Not condoned by the relevant authority
- WO:** Written-off not against savings (a debt was not created as *there is no* official was liable in law) (amounts not condoned and recoverable)