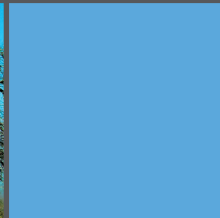




AUDITOR - GENERAL  
SOUTH AFRICA



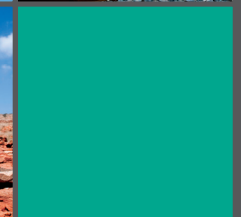
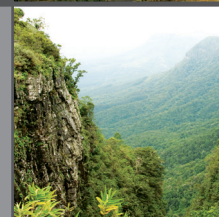
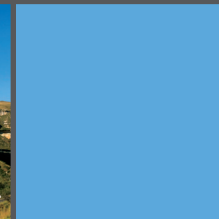
AUDIT PROCESS



BACKGROUND TO THE THREE  
ASPECTS WE AUDIT



ACCOUNTABILITY AND REMEDIES



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# AUDIT PROCESS

## WHAT DO AUDITORS DO?

## WHY DO THEY DO IT?

### RISK ASSESSMENT

Agree terms of engagement

Terms of the engagement are communicated and agreed to ensure a clear understanding of responsibilities of the parties, the objectives of the audit, access to information and the reports to be provided.

Plan the audit

An understanding of the auditee is obtained for risk assessment purposes and an audit plan is prepared.

Perform risk assessment procedures

A risk assessment is performed to determine the number and type of procedures to perform.

### RISK RESPONSE

Perform procedures in terms of risk assessment

Procedures are performed to obtain evidence that the financial statements and annual performance report do not contain material misstatements and that key legislation has been complied with.

### REPORTING

Prepare management report (not published)

The report is only provided to the management of the auditee and the executive authority at the end of the audit. It details the findings from procedures performed, identifies the root causes of these findings and makes recommendations for improvement.

Prepare audit report (published)

The report is published in the auditee's annual report. It informs those responsible for oversight, the public and others of material misstatements in the financial statements, material findings on the usefulness and reliability of the performance report, material non-compliance with key legislation in specific focus areas, and the deficiencies in internal control that were identified during the audit.

## WHAT IS AN AUDIT IN THE PUBLIC SECTOR?

The public sector auditor assesses the stewardship of public funds, implementation of government policies and compliance with key legislation in an objective manner. The scope of the annual audit performed for each auditee is prescribed in the Public Audit Act and the general notice issued in terms thereof. It includes the following:

- Providing assurance that the financial statements are free from misstatements that will affect the users of the financial statements
- Reporting on the usefulness and reliability of the information in the annual performance report
- Reporting on material non-compliance with key legislation
- Identifying the key internal control deficiencies that should be addressed to achieve a clean audit

Performance audits may also be performed to determine whether resources have been procured economically and are used effectively and efficiently.

## WHAT DOES AN AUDIT NOT DO?

Due to the test nature and other inherent limitations of an audit, together with the inherent limitations of internal control, there is an unavoidable risk that some, even material, misstatements in reported information may not be detected, and the completeness and the accuracy of the information reported are not guaranteed. Due to the focus on specific areas in key legislation, the audit does not provide assurance that all applicable legislation has been complied with. Although possible fraud may be identified during the audit, this is not the main purpose of the audit. The audit does not provide assurance that service delivery has been achieved, only that the annual performance report is useful and reliable.

## WHAT IS A CLEAN AUDIT?

A clean audit relates to three aspects:

- The financial statements are free from material misstatements
- There are no material findings on the annual performance report
- There are no material findings on non-compliance with key legislation

## HOW TO ACHIEVE A CLEAN AUDIT?

Matters reported by external and internal auditors should receive timeous management attention. Internal controls should address the following key areas:

### **Leadership**

- Establish a culture of honesty, ethical business practices and good governance
- Exercise oversight responsibility
- Ensure effective human resource practices
- Implement appropriate policies and procedures
- Approve and monitor the implementation of action plans to address internal control deficiencies
- Approve an appropriate information technology governance framework

### **Financial and performance management**

- Ensure proper record keeping of all transactions
- Maintain effective controls over daily and monthly processing and reconciling of transactions
- Produce regular, accurate and complete financial and performance (service delivery) reports
- Review and monitor compliance with applicable legislation
- Design and implement formal controls to mitigate information technology risks

### **Governance**

- Ensure that risks are periodically identified, assessed and effectively mitigated
- Maintain an adequately resourced and functioning internal audit unit
- Maintain an audit committee that performs its legislated duties and promotes accountability and service delivery

# BACKGROUND TO THE THREE ASPECTS WE AUDIT

- FINANCIAL STATEMENTS
- REPORTING ON PREDETERMINED OBJECTIVES
- COMPLIANCE WITH LEGISLATION

## THE AUDIT OF FINANCIAL STATEMENTS

The Municipal Finance Management Act requires municipalities and municipal entities to compile and submit annual financial statements for auditing by 31 August (or 30 September in the case of consolidated financial statements) of each year.

The financial statements submitted for auditing must be free from material misstatements. ***Misstatements*** refer to incorrect or omitted information in the financial statements. Examples include the incorrect or incomplete classification of transactions, or incorrect values placed on assets, liabilities or financial obligations and commitments.

The objective of an audit of financial statements is to express an audit opinion on whether the financial statements fairly present the financial position of auditees at financial year-end and the results of their operations for that financial year.

We can express one of the following audit opinions:

### CLEAN AUDIT OUTCOME:

The financial statements are free from material misstatements (in other words, a financially unqualified audit opinion) and there are no material findings on reporting on performance objectives or non-compliance with legislation.

### FINANCIALLY UNQUALIFIED AUDIT OPINION:

The financial statements contain no material misstatements. Unless we express a clean audit outcome, findings have been raised on either reporting on

predetermined objectives or non-compliance with legislation, or both these aspects.

### QUALIFIED AUDIT OPINION:

The financial statements contain material misstatements in specific amounts, or there is insufficient evidence for us to conclude that specific amounts included in the financial statements are not materially misstated.

### ADVERSE AUDIT OPINION:

The financial statements contain material misstatements that are not confined to specific amounts, or the misstatements represent a substantial portion of the financial statements.

### DISCLAIMER OF AUDIT OPINION:

The auditee provided insufficient evidence in the form of documentation on which to base an audit opinion. The lack of sufficient evidence is not confined to specific amounts, or represents a substantial portion of the information contained in the financial statements.

Apart from auditing the financial statements, our ***other reporting responsibilities*** include auditing auditees' reporting on their predetermined objectives and auditing auditees' compliance with legislation.

## THE AUDIT OF REPORTING ON PREDETERMINED OBJECTIVES

Legislation requires auditees to report against their predetermined objectives and to submit such annual performance reports for auditing. The objective of our audit of predetermined objectives is to determine whether the reported performance against auditees' predetermined objectives in the annual performance report is useful and reliable in all material respects, based on predetermined criteria. This means that the reported performance information must be valid, accurate and complete.

Since the 2005-06 financial year, we have been phasing in the auditing of predetermined objectives and explaining to leaders within all spheres of government the importance of lending credibility to published service delivery information through the auditing thereof. Since the 2009-10 financial year, we have included a separate audit conclusion, based on the results of the audit on predetermined objectives, in management reports. However, these conclusions have not yet been elevated to the level of the audit report.

## THE AUDIT OF COMPLIANCE WITH LEGISLATION

Legislation sets out the activities that auditees are charged with in serving the citizens and stipulate any limits or restrictions on such activities, the overall objectives to be achieved, and how due process rights of individual citizens are to be protected. Auditees are subject to legislation such as the Municipal Finance Management Act and the Municipal Systems Act, of which the objectives are proper financial management and performance management, transparency, accountability, stewardship and good governance.

The Public Audit Act requires us to audit compliance with legislation applicable to financial matters, financial management and other related matters each year.

Material instances of non-compliance are reported in the audit report.

To enhance accountability, auditees must identify and fully disclose any unauthorised, irregular as well as fruitless and wasteful expenditure incurred. In most part, such expenditure is incurred as a result of non-compliance with legislation.

All MFMA consolidated and provincial general reports are  
available for free download at  
[www.agsa.co.za](http://www.agsa.co.za)



# ACCOUNTABILITY AND REMEDIES

## ACCOUNTABILITY FOR, AND REMEDIES TO ADDRESS, TRANSGRESSIONS AND POOR PERFORMANCE

### *Introduction*

Our MFMA consolidated and provincial general reports summarise the findings in the audit reports of municipalities and municipal entities, additional findings reported to the municipal managers and senior management as well as critical matters reported in their financial statements. Some of the matters in the general reports are indicators of transgressions or poor performance by officials, municipal managers, mayors, councillors and even suppliers that do business with the municipalities and their entities.

Political leaders and municipal officials that deliberately or negligently ignore their duties and disobey legislation should be decisively dealt with through performance management and by enforcing the legislated consequences for transgressions. Role players in local government often say that they do not know what remedies to apply to deal with transgressions. The purpose of this section of the booklet is to highlight these remedies and the role players that are responsible for implementing them. This section summarises transgressions and performance matters, lists the applicable legislation, and highlights the responsibilities of each role player, while the annexure includes extracts from the legislation for easy reference.

# ACCOUNTABILITY AND REMEDIES

The table below describes the typical matters reported in the general reports that local government leadership should address.

TRANSGRESSION OR PERFORMANCE MATTER	OVERVIEW
<i>Financial misconduct</i>	<p><b>‘Financial misconduct’</b> means any misappropriation, mismanagement, waste or theft of the money of a municipality. A municipal manager, senior manager or other official who is responsible for financial management also commits financial misconduct if he or she deliberately or negligently:</p> <ul style="list-style-type: none"><li>• fails to comply with a duty imposed by a provision of the MFMA or fails to perform a delegated duty</li><li>• makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure</li><li>• provides incorrect or misleading information in any document, which in terms of a requirement of the MFMA must be submitted to the mayor or the council of the municipality, the auditor-general, the National Treasury or other organ of state; or which has to be made public</li><li>• contravenes a provision of the MFMA (applicable to municipal managers only).</li></ul>

TRANSGRESSION OR PERFORMANCE MATTER	OVERVIEW
<b><i>Unauthorised, irregular as well as fruitless and wasteful expenditure</i></b>	<p>In simple terms, <b>‘unauthorised expenditure’</b> means expenditure that was in excess of the amount budgeted or that was not spent in accordance with the purpose for which it was intended. <b>‘Irregular expenditure’</b> means expenditure spent without complying with applicable legislation, while <b>‘fruitless and wasteful expenditure’</b> means expenditure that was made in vain and would have been avoided had reasonable care been exercised. (The annexure includes the MFMA's definitions of these types of expenditure.)</p> <p>In terms of the MFMA, any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an unauthorised, irregular or fruitless and wasteful expenditure, is liable for that expenditure.</p>
<b><i>Possible fraud and corruption</i></b>	This area relates to all transgressions or allegations that could be indicators of fraud and corruption.
<b><i>Poor work performance by suppliers</i></b>	This area relates to instances where suppliers failed to honour, neglected, went back on or failed to comply with a contract procured through the supply chain management system.
<b><i>Poor work performance by the municipal manager and senior management</i></b>	This area relates to instances where a senior manager (including the municipal manager) is underperforming in terms of the municipality's performance management system.

The following legislation includes the remedies for transgressions and poor performance:

SHORTENED TITLE	FULL TITLE
<b><i>Disciplinary Reg.</i></b>	Local Government: Disciplinary Regulations for Senior Managers, 2010
<b><i>MFMA</i></b>	Local Government: Municipal Finance Management Act, No. 56 of 2003
<b><i>MSA</i></b>	Local Government: Municipal Systems Act, No. 32 of 2000, as amended
<b><i>Performance Reg.</i></b>	Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006
<b><i>PRECCA</i></b>	Prevention and Combating of Corrupt Activities Act, No. 12 of 2004
<b><i>PPR</i></b>	Preferential Procurement Regulations, 2011
<b><i>SCM Reg.</i></b>	Municipal Supply Chain Management Regulations, 2005

The table below summarises the responsibilities of key role players to take action in response to the matters reported.

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
Financial misconduct by municipal manager or senior managers						
Report possible financial misconduct	Disciplinary Reg. 5(1)	Any person or institution can report possible financial misconduct to the municipal manager, mayor or municipal council, who has a legislated duty to investigate the allegation				
Table allegations in the council within seven days of receiving them	Disciplinary Reg. 5(2)	Allegations against senior managers		Allegations against municipal manager		
Appoint independent investigators within seven days to investigate allegations if there is reasonable cause to believe an act of misconduct has been committed	MFMA s171(4) Disciplinary Reg. 4(1), 5(3) & 5(4)					
Table report from investigator in the council	Disciplinary Reg. 5(5)	Allegations against senior managers		Allegations against municipal manager		
Institute disciplinary proceedings by appointing a presiding officer after considering the report Suspend person if necessary	Disciplinary Reg. 5(6), 5(7) & 6(1)					

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
Conduct disciplinary hearing and impose sanctions if found guilty	Disciplinary Reg. 10 (1), 12(1) & 12(2)(a)					Presiding officer
Implement sanctions	Disciplinary Reg. 12(3)(a)					
Report allegations of financial misconduct that constitute a criminal offence to SAPS	Disciplinary Reg. 8(4)	Allegations against senior managers		Allegations against municipal manager		
Report and monitor process	Disciplinary Reg. 6(5)(b), 12(3)(b) & 12(3)(c)		Report		Receive reports	Minister of local government; MEC for finance – receive reports
<b>Financial misconduct by other officials responsible for financial management</b>						
Report possible financial misconduct		Any person or institution can report possible financial misconduct by an official of a municipality to the municipal manager, who has a legislated duty to investigate the allegation				

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
Investigate allegation Conduct disciplinary hearing if allegation is confirmed and impose sanction if found guilty Report allegations of financial misconduct that constitute a criminal offence to SAPS	MFMA s62(1)(e) & s171(4)					
<b>Unauthorised, irregular as well as fruitless and wasteful expenditure</b>						
Detect unauthorised, irregular as well as fruitless and wasteful expenditure, and disclose such expenditure in the financial statements	MFMA s125(2)(d)(i)					

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
<p>Promptly inform the mayor and MEC for local government in writing of:</p> <ul style="list-style-type: none"> <li>any unauthorised, irregular or fruitless and wasteful expenditure incurred</li> <li>whether any person is responsible or under investigation for such expenditure</li> <li>the steps taken to recover or rectify such expenditure and to prevent a recurrence</li> </ul>	MFMA s32(4)	Report		Receive reports	Receive reports	
<p>Investigate unauthorised, irregular as well as fruitless and wasteful expenditure</p> <p>Recover resultant loss from liable person or write off loss if irrecoverable</p> <p>Authorise unauthorised expenditure in an adjustment budget</p>	MFMA s32(1) & s32(2)					



Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
Report cases of irregular expenditure that constitute a crime to SAPS	MFMA s32(6) & s32(7)		Cases against municipal manager or if municipal manager fails to report			
<b>Possible fraud and corruption</b>						
Report possible fraud and corruption		Any person or institution can report possible fraud and corruption, whether directly or through a whistle-blowing mechanism, to the municipal manager, MEC for local government or minister responsible for local government, who has a legislated duty to investigate the possible fraud and corruption				
Report fraud and corruption in SCM to municipal manager	SCM Reg. 46(2)(i)					Official or role player involved in SCM
Investigate allegation of SCM fraud and corruption Take appropriate action against official or other SCM role player	SCM Reg. 38(1)(b)					

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
Take action against a bidder or contractor who committed fraud or corruption, including: <ul style="list-style-type: none"> <li>disqualifying the bidder</li> <li>cancelling the contract</li> <li>recovering costs and losses incurred</li> <li>restricting the bidder from doing business with the state for 10 years</li> </ul>	SCM Reg. 38(1)(e) & 38(1)(f) PPR 13					
Report cases of theft and fraud to SAPS	MFMA s32(6)(b) & s32(7)		Cases against municipal manager or municipal manager fails to report			
Report possible fraud and corruption involving an amount of R100 000 or more to SAPS	PRECCA s34(1) & s34(4)					Senior managers in the municipality

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
<p>If the MEC has reason to believe that fraud or corruption has occurred or is occurring:</p> <ul style="list-style-type: none"> <li>by written notice, request municipal council or municipal manager to provide information relating to the fraud or corruption</li> <li>designate a person or persons to investigate the matter if the MEC considers it necessary</li> <li>submit statement to the National Council of Provinces motivating the action taken within 14 days</li> <li>table a report on the outcome of the investigation in the provincial legislature</li> </ul>	MSA s106(1), s106(3)(a) & s106(4)(a)					

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
<p>If the minister of local government has reason to believe that fraud or corruption has occurred or is occurring:</p> <ul style="list-style-type: none"> <li>request the MEC to investigate the fraud or corruption</li> <li>conduct investigation if the MEC fails and send report to the President</li> </ul>	MSA s106(4) & s106(5)					Minister responsible for local government
<b>Poor work performance by suppliers</b>						
Properly enforce contracts or agreements and monitor the contractor's performance monthly	MFMA s116(2)(a), s116(2)(b) & s116(2)(c)					
Manage non- or underperformance through termination of contract	MFMA s116(1)(b)(i) PPR 13(1)(b) & 13(2)					

Action required	Reference to legislation	Role player responsible for the action				
		Municipal manager	Municipal council	Mayor	MEC for local government	Other role player
Report and monitor management of contracts and performance of contactors	MFMA s116(2)(d)	Report	Receive report			
<b>Poor work performance by the municipal manager and senior management</b>						
Develop and adopt appropriate systems (policies) and procedures to monitor, measure and evaluate performance of staff	MSA s67(1)(d)					
Management of unsatisfactory performance, including: <ul style="list-style-type: none"> <li>• formal programme of counselling</li> <li>• remedial or developmental support to the employee to improve performance</li> <li>• disciplinary proceedings</li> <li>• termination of employment on grounds of unfitness or incapacity</li> </ul>	Performance Reg. 32(3) Disciplinary Reg. 16			In the case of municipal manager		

## ANNEXURE: EXTRACTS FROM LEGISLATION

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
<b>Financial misconduct by municipal manager or senior managers</b>		
MFMA	171(1)	<p>An accounting officer of a municipality commits an act of financial misconduct if he or she deliberately or negligently:</p> <ul style="list-style-type: none"> <li>(a) contravenes a provision of the MFMA;</li> <li>(b) fails to comply with a duty imposed by a provision of the MFMA on the accounting officer;</li> <li>(c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or</li> <li>(d) provides incorrect or misleading information in any document which in terms of a requirement of the MFMA must be submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state, or made public.</li> </ul>
MFMA	171(2)	<p>A chief financial officer commits an act of financial misconduct if he or she deliberately or negligently:</p> <ul style="list-style-type: none"> <li>(a) fails to carry out a duty delegated to him or her in terms of section 79 or 81(e) of the MFMA;</li> <li>(b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81(e) of the MFMA;</li> <li>(c) makes or permits, or instructs another official of the municipality to make an unauthorised, irregular or fruitless and wasteful expenditure; or</li> <li>(d) provides incorrect or misleading information to the accounting officer for the purposes of a document which in terms of a requirement of the MFMA must be submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state, or made public.</li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
MFMA	171(3)	<p>A senior manager or other official exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 of the MFMA, commits an act of financial misconduct if he or she deliberately or negligently:</p> <ul style="list-style-type: none"> <li>(a) fails to carry out the delegated duty;</li> <li>(b) contravenes or fails to comply with a condition of the delegated power or duty;</li> <li>(c) makes an unauthorised, irregular or fruitless and wasteful expenditure; or</li> <li>(d) provides incorrect or misleading information to the accounting officer for the purposes of a document which in terms of a requirement of the MFMA must be submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state, or made public.</li> </ul>
MFMA	171(4)	<p>A municipality must:</p> <ul style="list-style-type: none"> <li>(a) investigate allegations of financial misconduct against the accounting officer, chief financial officer or senior manager of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and</li> <li>(b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or senior manager in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act.</li> </ul>
Disciplinary Reg.	1(e)	<p>“Financial misconduct” means any misappropriation, mismanagement, waste, or theft of the finances of a municipality and also includes any form of financial misconduct specifically set out in section 171 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).</p>
Disciplinary Reg.	4(1)	<p>If a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance with this Disciplinary Code.</p>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
Disciplinary Reg.	5	<ul style="list-style-type: none"> <li>(1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.</li> <li>(2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven (7) days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven (7) days to consider the said report.</li> <li>(3) If the municipal council is satisfied that: <ul style="list-style-type: none"> <li>(a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven (7) days appoint an independent investigator to investigate the allegation(s) of misconduct; and</li> <li>(b) there is no evidence to support the allegation(s) of misconduct against the senior manager, the municipal council must within seven (7) days dismiss the allegation(s) of misconduct.</li> </ul> </li> <li>(4) The investigator appointed in terms of sub-regulation (3)(a) must, within a period of thirty (30) days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.</li> <li>(5) The report contemplated in sub-regulation (4) must be tabled before the municipal council in the manner and within the time frame as set out in sub-regulation (2).</li> <li>(6) After having considered the report referred to in sub-regulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.</li> <li>(7) The resolution in sub-regulation (6) must: <ul style="list-style-type: none"> <li>(a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature; and</li> <li>(b) authorise the mayor, in the case of municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to appoint an independent and external presiding officer; and an officer to lead evidence; and sign the letter of appointment.</li> </ul> </li> </ul>



LEGISLATION	SECTION OR REGULATION	REQUIREMENT
Disciplinary Reg.	6(1)	<p>The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that:</p> <ul style="list-style-type: none"> <li>(a) the presence of the senior manager at the workplace may: <ul style="list-style-type: none"> <li>(i) jeopardise any investigation into the alleged misconduct;</li> <li>(ii) endanger the well-being or safety of any person or municipal property; or</li> <li>(iii) be detrimental to stability in the municipality; or</li> </ul> </li> <li>(b) the senior manager may: <ul style="list-style-type: none"> <li>(i) interfere with potential witnesses; or</li> <li>(ii) commit further acts of misconduct.</li> </ul> </li> </ul>
Disciplinary Reg.	6(5)(b)	The municipal council must inform the Minister and the MEC responsible for local government in the province where such suspension has taken place in writing of such suspension and the reasons for such within a period of seven (7) days after such suspension.
Disciplinary Reg.	8(4)	Where a senior manager is accused of a financial misconduct which constitutes a criminal offence, the mayor or municipal manager, as the case may be, must report the matter to the South African Police Service in terms of the Municipal Finance Management Act, 2003.
Disciplinary Reg.	10(1)	<p>The disciplinary hearing must commence -</p> <ul style="list-style-type: none"> <li>(a) within three months of the resolution to institute disciplinary action; and</li> <li>(b) on a date not less than seven (7) days and not more than ten (10) days from the date of service of the charge sheet and the written notice of the disciplinary hearing on the senior manager.</li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
Disciplinary Reg.	12(1), 12(2)(a) & 12(3)	<p>(1) The presiding officer may impose any, or a combination of the following sanctions, with or without conditions:</p> <ul style="list-style-type: none"> <li>(a) suspension without pay for no longer than three months;</li> <li>(b) demotion;</li> <li>(c) transfer to another post;</li> <li>(d) reduction in salary, allowances or other benefits;</li> <li>(e) an appropriate fine; or</li> <li>(f) dismissal.</li> </ul> <p>(2) The presiding officer must impose a sanction within ten (10) days of the completion of the hearing.</p> <p>(3) The municipality must:</p> <ul style="list-style-type: none"> <li>(a) implement the sanction imposed by the presiding officer;</li> <li>(b) report the outcome of any disciplinary hearing within fourteen (14) days after the finalisation of such disciplinary hearing to the Minister and MEC responsible for local government in the province;</li> <li>(c) where financial misconduct is involved, report to the MEC responsible for finance in the province and the Auditor-General as prescribed in the Municipal Finance Management Act, 2003.</li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
<b>Financial misconduct by other officials responsible for financial management</b>		
MFMA	62(1)(e)	The accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15.
MFMA	171(4)	A municipality must: <ul style="list-style-type: none"> <li>(a) investigate allegations of financial misconduct against an official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and</li> <li>(b) if the investigation warrants such a step, institute disciplinary proceedings against an official in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act.</li> </ul>
<b>Unauthorised, irregular as well as fruitless and wasteful expenditure</b>		
MFMA	1 - Definitions	<p>“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:</p> <ul style="list-style-type: none"> <li>(a) overspending of the total amount appropriated in the municipality’s approved budget;</li> <li>(b) overspending of the total amount appropriated for a vote in the approved budget;</li> <li>(c) expenditure from a vote unrelated to the department or functional area covered by the vote;</li> <li>(d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;</li> <li>(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</li> <li>(f) a grant by the municipality otherwise than in accordance with this Act.</li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
MFMA	1 – Definitions	<p>“Irregular expenditure”, in relation to a municipality or municipal entity, means:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(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</li> <li>(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,</li> </ul> <p>but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”.</p>
MFMA	1 – Definitions	<p>“Fruitless and wasteful expenditure” means expenditure that was made in vain and would have been avoided had reasonable care been exercised.</p>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
MFMA	32(1)	<p>Without limiting liability in terms of the common law or other legislation:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);</li> <li>(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</li> <li>(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.</li> </ul>
MFMA	125(2)(d)(i)	<p>The notes to the annual financial statements of a municipality or municipal entity 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.</p>
MFMA	32(4)	<p>The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of:</p> <ul style="list-style-type: none"> <li>(a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;</li> <li>(b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and</li> <li>(c) the steps that have been taken: <ul style="list-style-type: none"> <li>(i) to recover or rectify such expenditure; and</li> <li>(ii) to prevent a recurrence of such expenditure.</li> </ul> </li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
MFMA	32(2)	<p>A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure:</p> <p>(a) in the case of unauthorised expenditure, is:</p> <ul style="list-style-type: none"> <li>(i) authorised in an adjustments budget; or</li> <li>(ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and</li> </ul> <p>(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.</p>
MFMA	32(6)(a)	The accounting officer must report to the South African Police Service all cases of alleged irregular expenditure that constitute a criminal offence.
MFMA	32(7)	<p>The council of a municipality must take all reasonable steps to ensure that all cases of alleged irregular expenditure that constitute a criminal offence are reported to the South African Police Service if:</p> <ul style="list-style-type: none"> <li>(a) the charge is against the accounting officer; or</li> <li>(b) the accounting officer fails to comply with subsection 32(6).</li> </ul>
<b>Possible fraud and corruption</b>		
PRECCA	34(1)	Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence under Part 1, 2, 3 or 4, or section 20 or 21 of chapter 2 or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
PRECCA	34(4)	<p>The following persons hold a position of authority:</p> <ul style="list-style-type: none"> <li>(a) the Director-General or head, or equivalent officer, of a national or provincial department;</li> <li>(b) in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);</li> <li>(c) any public officer in the Senior Management Service of a public body;</li> <li>(d) any head, rector or principal of a tertiary institution;</li> <li>(e) the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);</li> <li>(f) the executive manager of any bank or other financial institution;</li> <li>(g) any partner in a partnership;</li> <li>(h) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;</li> <li>(i) any other person who is responsible for the overall management and control of the business of an employer; or</li> <li>(j) any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.</li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
SCM Reg.	46(2)(i)	A municipal code of ethical conduct must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including: <ul style="list-style-type: none"> <li>(i) any alleged fraud, corruption, favouritism or unfair conduct;</li> <li>(ii) any alleged contravention of regulation 47 (inducements, rewards, gifts and favours); or</li> <li>(iii) any alleged breach of the code of ethical conduct.</li> </ul>
MSA	106(1)	If an MEC has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality; or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC must: <ul style="list-style-type: none"> <li>(a) by written notice to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; or</li> <li>(b) if the MEC considers it necessary, designate a person or persons to investigate the matter.</li> </ul>
MSA	106(3)(a)	An MEC issuing a notice in terms of subsection (1)(a) or designating a person to conduct an investigation in terms of subsection (1)(b), must within 14 days submit a written statement to the National Council of Provinces motivating the action.
MSA	106(4)	<ul style="list-style-type: none"> <li>(a) The Minister may request the MEC to investigate maladministration, fraud, corruption or any other serious malpractice which, in the opinion of the Minister, has occurred or is occurring in a municipality in the province.</li> <li>(b) The MEC must table a report detailing the outcome of the investigation in the relevant provincial legislature within 90 days from the date on which the Minister requested the investigation and must simultaneously send a copy of such report to the Minister, the Minister of Finance and the National Council of Provinces.</li> </ul>



LEGISLATION	SECTION OR REGULATION	REQUIREMENT
MSA	106(5)	<p>(a) Where an MEC fails to conduct an investigation within 90 days, notwithstanding a request from the Minister in terms of subsection (4)(a), the Minister may in terms of this section conduct such investigation.</p> <p>(b) The Minister must send a report detailing the outcome of the investigation referred to in paragraph (a) to the President.</p>
MFMA	32(6)(b)	The accounting officer must report to the South African Police Service all cases of alleged theft and fraud that occurred in the municipality.
MFMA	32(7)	<p>The council of a municipality must take all reasonable steps to ensure that all cases of alleged theft and fraud are reported to the South African Police Service if:</p> <p>(a) the charge is against the accounting officer; or</p> <p>(b) the accounting officer fails to comply with subsection 32(b).</p>
SCM Reg.	38(1)(b)	<p>A supply chain management policy must provide for measures for the combating of abuse of the supply chain management system, and must enable the accounting officer to investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with the supply chain management policy, and when justified:</p> <p>(i) take appropriate steps against the official or other role player; or</p> <p>(ii) report any criminal conduct to the South African Police Service.</p>
SCM Reg.	38(1)(e)	A supply chain management policy must provide for measures for the combating of abuse of the supply chain management system, and must enable the accounting officer to reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for that particular contract.

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
SCM Reg.	38(1)(f)	<p>A supply chain management policy must provide for measures for the combating of abuse of the supply chain management system, and must enable the accounting officer to cancel the contract awarded to a person if:</p> <ul style="list-style-type: none"> <li>(i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or</li> <li>(ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person.</li> </ul>
PPR	13	<ul style="list-style-type: none"> <li>(1) An organ of state must, upon detecting that:               <ul style="list-style-type: none"> <li>(a) the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis; or</li> <li>(b) any of the conditions of the contract have not been fulfilled, act against the tenderer or person awarded the contract.</li> </ul> </li> <li>(2) An organ of state may, in addition to any other remedy it may have against the person contemplated in sub-regulation (1):               <ul style="list-style-type: none"> <li>(a) disqualify the person from the tendering process;</li> <li>(b) recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;</li> <li>(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;</li> <li>(d) restrict the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the <i>audi alteram partem</i> (hear the other side) rule has been applied; and</li> <li>(e) forward the matter for criminal prosecution.</li> </ul> </li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
<b>Poor work performance by suppliers</b>		
MFMA	116(1)(b)(i)	A contract or agreement procured through the supply chain management system of the municipality or municipal entity must stipulate terms and conditions of the agreement which must include provisions providing for the termination of the contract or agreement in the case of non- or under-performance.
MFMA	116(2)	<p>The accounting officer of a municipality or municipal entity must:</p> <ul style="list-style-type: none"> <li>(a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced;</li> <li>(b) monitor on a monthly basis the performance of the contractor under the contract or agreement;</li> <li>(c) establish capacity in the administration of the municipality or municipal entity to assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b); and to oversee the day-to-day management of the contract or agreement; and</li> <li>(d) regularly report to the council of the municipality or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.</li> </ul>
<b>Poor work performance by the municipal manager and senior management</b>		
MSA	67(1)(d)	A municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of section 72(1)(c), to ensure fair, efficient, effective and transparent personnel administration, including the monitoring, measuring and evaluating of the performance of staff.

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
Performance Reg.	32(3)	<p>In the case of unacceptable performance, the employer shall:</p> <ul style="list-style-type: none"> <li>(a) provide systematic remedial or developmental support to assist the employee to improve his or her performance; and</li> <li>(b) after appropriate performance counselling and having provided the necessary guidance and/or support and reasonable time for improvement in performance, and performance does not improve, the employer may consider steps to terminate the contract of employment of the employee on grounds of unfitness or incapacity to carry out his or her duties.</li> </ul>
Disciplinary Reg.	16	<ul style="list-style-type: none"> <li>(1) If the municipality has reason to believe that a senior manager is not performing in accordance with the minimum performance standards of his or her post, the mayor, in the case of the municipal manager, or the municipal manager, in case of the manager directly accountable to the municipal manager, must: <ul style="list-style-type: none"> <li>(a) convene a meeting to give feedback to the senior manager on his or her performance; and</li> <li>(b) furnish the senior manager with reasons why it is necessary to initiate this procedure.</li> </ul> </li> <li>(2) In the meeting contemplated in sub-regulation (1)(a), the mayor or the municipal manager, as the case may be, must: <ul style="list-style-type: none"> <li>(a) explain the requirements, level, skills and nature of the post;</li> <li>(b) evaluate the senior manager's performance in relation to the performance agreement;</li> <li>(c) explain the reasons why the performance is considered substandard; and</li> <li>(d) afford the senior manager or his or her representative an opportunity to respond to the performance outcomes referred to in paragraph (c).</li> </ul> </li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
Disciplinary Reg.	16	<p>(3) After considering the senior manager's reasons, the mayor or the municipal manager may, if necessary:</p> <ul style="list-style-type: none"> <li>(a) initiate a formal programme of counselling and training to enable the senior manager to reach the required standard of performance, which must include: <ul style="list-style-type: none"> <li>(i) assessing the time that it will take for the senior manager to deal with substandard performance;</li> <li>(ii) establishing realistic time frames within which the municipality will expect the senior manager to meet the required performance standards; and</li> <li>(iii) identifying and providing appropriate training for the senior manager to reach the required standard of performance.</li> </ul> </li> <li>(b) establish ways to address any factors that may affect the senior manager's performance that lie beyond the senior manager's control.</li> </ul> <p>(4) If the senior manager fails to meet the required performance standard for the post after being subjected to a formal programme of counselling and training as contemplated in sub-regulation (3), the:</p> <ul style="list-style-type: none"> <li>(a) mayor, in the case of the municipal manager, or municipal manager, in the case of the manager directly accountable to the municipal manager, may: <ul style="list-style-type: none"> <li>(i) regularly evaluate the senior manager's performance; or</li> <li>(ii) provide further remedial or developmental support to assist the senior manager to eliminate the substandard performance.</li> </ul> </li> </ul>

LEGISLATION	SECTION OR REGULATION	REQUIREMENT
Disciplinary Reg.	16	<p>(5) If the senior manager's performance does not improve after he or she received appropriate performance counselling and the necessary support and reasonable time to improve his or her performance as contemplated in sub-regulation (4), or he or she refuses to follow a formal programme of counselling and training contemplated therein:</p> <p>(a) the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, must bring the allegations of substandard performance against the senior manager to the attention of the municipal council in the form of a report.</p> <p>(b) the mayor or the municipal manager, whatever the case may be, must table the report contemplated in paragraph (a) before the municipal council not later than seven (7) days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven (7) days to consider the said report.</p> <p>(6) If the municipal council is satisfied that sufficient evidence exists to institute disciplinary proceedings against the senior manager on the basis of the alleged substandard performance:</p> <p>(a) the municipal council must do so by way of a resolution; and</p> <p>(b) the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to municipal manager, must:</p> <p>(i) furnish the senior manager with written reasons why it is necessary to initiate this procedure; and</p> <p>(ii) invoke the provisions of regulation 8 of these Regulations.</p>

