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REFLECTIONS ON THE AMENDED PAA: USING THE LAW AND A BIT OF PERSUASION

Shivers of trepidation may well have run down some spines when President Cyril Ramaphosa signed the Public Audit Amendment Bill into law in November 2018. After all, it signalled the intention to end the culture of impunity that had taken root in public finance management in South Africa.

At long last, the auditor-general had been given more powers to deal with financial irregularities in government, and the media greeted the news with headlines announcing that the AGSA now had "teeth" to enforce its recommendations.

While those who had been getting away with financial wrongdoing had reason for some anxiety, the organisation moved swiftly to reassure those who had more legitimate worries.

The AGSA's 2020 integrated annual report noted ***A number of our stakeholders expressed anxiety about the possible consequences of our enhanced powers.***

Much of their anxiety was because they were unaware of what the amendments entailed.

AGSA audit teams shared this anxiety. They were the people delivering these amended PAA messages to their auditees, and they needed to ensure that they had a firm grasp of the amendments. The AGSA heard its staff and went on an intensive training drive that ensured the staff was adequately prepared to engage with their respective stakeholders to raise awareness.

Alice Muller, acting national leader and leader of the PAA project addressing PAA pioneers

LEADING FROM THE FRONT

In response to its auditees' trepidation, the AGSA embarked on one of its most comprehensive and intensive awareness campaigns yet, not just for a few months before and after the amended powers came into effect on 1 April 2019, but long afterwards.

Between December 2019 and the end of March 2020, for example, Kimi and his top leadership team met with over 35 executive authorities, 78 accounting officers/authorities and 60 audit committees.

They also reached out to professional and industry stakeholders, the media and civil society organisations, ensuring everyone understood the auditor-general's enhanced powers, how the material irregularity process works and most importantly, why they were necessary.

A material irregularity occurs when:

- a person does not comply with or contravenes legislation, engages in fraud or theft, or violates their entrusted duty
- this action can or does result in a significant financial loss, the misuse or loss of a significant public resource or substantial harm to a public sector institution or the general public
- the action is identified during a audit performed under the PAA

Kimi, as always, set the tone for calm, reasoned conversation. He took pains to explain why the enhanced powers were necessary, what they were meant to achieve and, most importantly, what limits applied to them.

THE PERSUASION ERA

Between 2009 and 2011, in what was called the persuasion era, former auditor-general Terence Nombembe visited every province in the hope of instilling accountability. ***When I attended these meetings, you could see that some of the presentations were simply rehearsals. People were told to say this and that,*** Kimi said in an interview published in the Mail & Guardian on 7 October 2020.

Something had to change. Over a three-year period during Kimi's term, the audit outcomes became worse. Levels of irregular expenditure escalated and every year, the outcomes deteriorated. Kimi couldn't keep watching this happen. ***In the first few years of my term, the team and I realised that we needed to mix persuasion with something else, such as legal ramifications,*** he said.

And this is where the concept of the amendments to the Public Audit Act was born. According to Kimi, ***Accounting officers now know that if they do not address the oversight issues it will hit them in their own pocket.*** Kimi used every opportunity to make it clear that the AGSA would not be using its enhanced powers to go in guns blazing, so to speak, bringing wrongdoers to book and making accounting officers pay up left, right and centre.

The AGSA repeatedly emphasised the limits to the enhanced powers, the checks and balances in place, the care taken to implement the changes systematically and responsibly and, above all, the organisation's unwavering commitment to transparency and accountability in exercising its powers.

We accept our powers with the seriousness that they deserve and, in turn, we subject our use of these powers to full scrutiny, ensuring that we are held to the same strict level of accountability as those we audit, he said in the 2020 integrated annual report.

Measured messages such as these have gone a long way towards reassuring stakeholders and allaying concerns. More important, perhaps, is that Kimi and his top team followed up their words with action.

PUTTING WORDS INTO ACTION

As promised, the AGSA has meticulously recorded and reported on its progress in implementing the material irregularity process, going into great detail in its general reports on the national and provincial, and local government audit outcomes since 1 April 2019.

In the first phase, the office used its general reports to outline all the material irregularities identified to date. It also highlighted the trail from each incident of non-compliance with the country's laws and regulations to the steps taken by the accounting officer or authority to remedy these.

In the second year of implementation, which is currently under way, the AGSA will test the effectiveness of the remedial actions. If required, it will apply the remaining set of powers up to issuing certificates of debt to those accounting officers or authorities who fail to prevent the loss of public monies or resources.

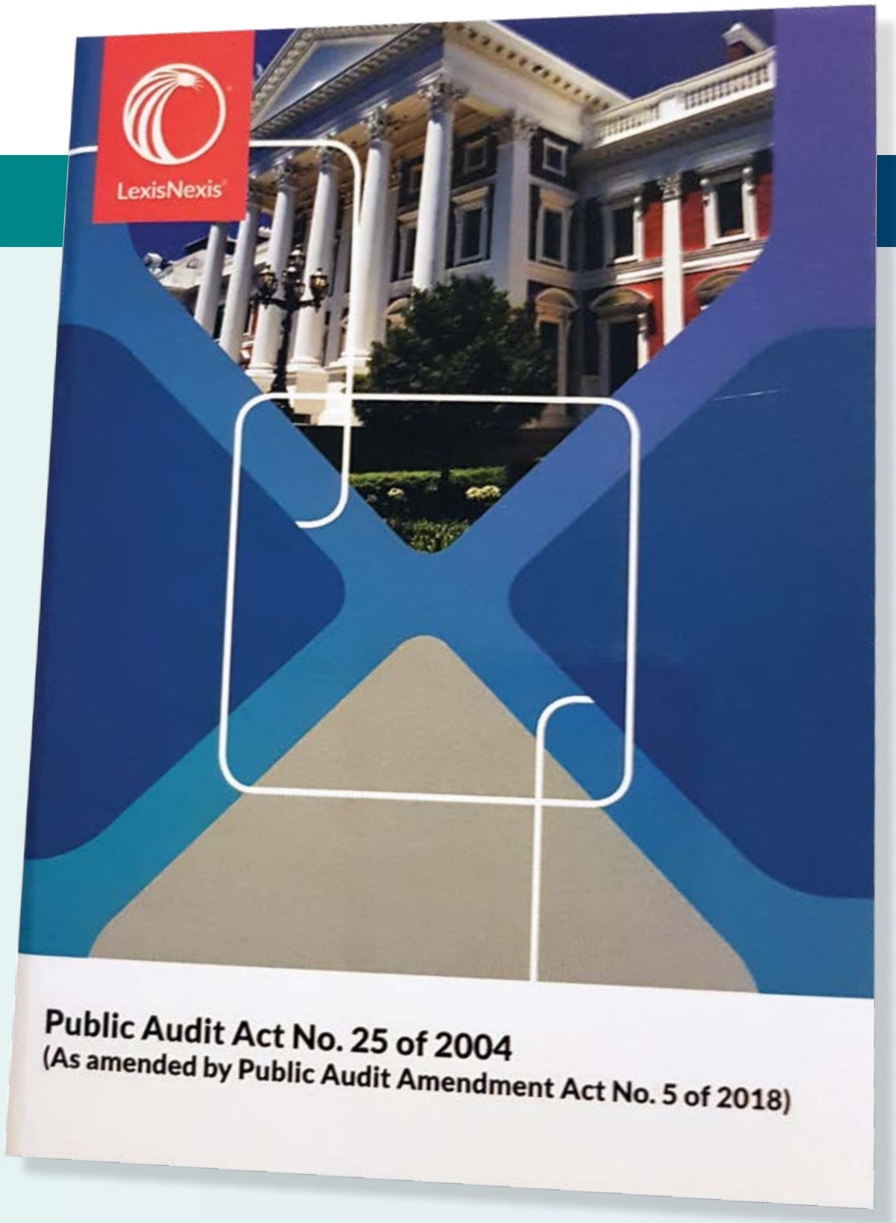
Under Kimi's leadership, the organisation began publishing its accountability report as part of its integrated annual report, focusing specifically on its implementation of the material irregularity process.

With words and actions in alignment, the AGSA has secured the cooperation of the vast majority of accounting officers whose departments or entities were subject to material irregularity audits.

Evidence of this is that with 92% of material irregularities identified in national and provincial departments, the accounting officers concerned are taking appropriate action. Only three irregularities were not adequately addressed, one of which has been referred to a public body for further investigation.

Although implementing the material irregularities process is still in its infancy, these early results set the scene for a new culture of accountability in public financial management. And, to use Kimi's own words, demonstrate the effectiveness of using ***the law with a bit of persuasion.***

The AGSA exco celebrates Parliament approving the Public Audit Amendment Bill in 2018



PAA TIMELINE

1911

THE EXCHEQUER AND AUDIT ACT

It laid out all the regulations and processes for the guidance of auditors of accounts in the provinces of the Cape of Good Hope, Natal, Transvaal and Orange Free State.

1916

THE EXCHEQUER AND AUDIT AMENDMENT ACT

This Act amended a number of provisions contained in the 1911 Act.

1956

2ND AMENDMENT THE EXCHEQUER AND AUDIT ACT

Confirmed that the auditor-general must review, scrutinise and audit the accounts of all those to whom the receipt, safekeeping, payment or distribution of state funds were entrusted.

The auditor-general was required to report to the minister of finance on his findings.

1975

THE EXCHEQUER ACT

The Exchequer Act of 1975 replaced the previous acts of 1911, 1916 and 1956, consolidating and modernising all the regulations and above all, including provisions to conduct performance audits.

1989

THE AUDITOR-GENERAL ACT

This Act made provision for the auditor-general and his staff to operate under a separate act while the executive still retained the final say on crucial administrative issues such as the procurement of resources.

It brought the organisation a step closer to full independence.

continued...

1992

THE AUDITOR-GENERAL AMENDMENT ACT

Increased the auditor-general's level of authority as well as independence.

1992

THE AUDIT ARRANGEMENT ACT

Came into effect on 1 April 1993, transferring overall supervision of the Office of the Auditor-General and related matters to a newly created Audit Commission and a Staff Management Board (now Scoag).

1995

THE AUDIT MATTERS RATIONALISATION AND AMENDMENT ACT

Provided for the rationalisation of the Office of the auditor-general and the abolition of the audit offices of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei.

1996

THE CONSTITUTION OF RSA

Auditor-general's office gained its full independence and saw that independence being enshrined in the Constitution of the Republic of South Africa, 1996.

2004

THE PUBLIC AUDIT ACT (PAA)

This act confirmed the independence of SAI-SA and strengthened and grew its mandate, while also promoting the transparency and accountability of the SAI's operations.

2018 -THE PUBLIC AUDIT AMENDMENT BILL

Amended the Public Audit Act to, inter alia, provide for the auditor-general to take remedial action, to ensure that losses suffered by the State are, where possible, recovered, as well as to refer certain suspected material irregularities for investigation.

Explaining the AG's enhanced powers

AUDITOR-GENERAL SOUTH AFRICA
Auditing to build public confidence

The difference between material irregularities and irregular expenditure

Irregular expenditure is all spending where the law is not followed in the process leading up to the payment. For example, if the procurement process for the awarding of a construction contract did not comply with legislation on supply chain management, all payments to that contractor will be irregular expenditure. When irregular expenditure is identified, the accounting officer or authority performs an investigation to determine the impact by considering if the non-compliance resulted in a financial loss, whether there was any fraud involved, and if an official should be held accountable. If there was no loss or fraud, the irregular expenditure will be condoned after the necessary disciplinary action had been taken.

As with irregular expenditure, a material irregularity also stems from not following the law, but it has a broader scope and can be applied to fraud and theft and to a breach of fiduciary duty (which means that an official did not do what the legislation requires and/or did not act in the best interest of the auditee). The key difference is that for any non-compliance to be considered a material irregularity, there must already be an indication that the non-compliance resulted in, or is likely to have a material impact, in the form of a material financial loss, the misuse or loss of a material public resource, or substantial harm to a public sector institution or the general public.

Their values differ, as irregular expenditure is the total expenditure, while a material irregularity will not always have a value (for example, substantial harm cannot be quantified). But if the material irregularity relates to a financial loss, the value will be the loss.

An example of **irregular expenditure**

A lack of a competitive bidding process for the awarding of a contract of R20 million.

The irregular expenditure is all the payments made on the contract to date (e.g. R10 million).

An example of **material expenditure**

A lack of a competitive bidding process for the awarding of a contract of R20 million resulting in a material financial loss, as the same service could have been delivered at a lower price (e.g. R18 million).

The financial loss is R2 million (what was lost and what can still be lost).