

**MFMA Circular No. 76**
Municipal Finance Management Act No. 56 of 2003

Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings

Purpose

The implementation of the Municipal Finance Management Act No. 56 of 2003 (MFMA) in all municipalities and entities remains an important strategy to modernise and improve financial management and service delivery. Linked to this strategy are the fundamental principles of effective, efficient and economical utilisation of public resources and transparent and accountable financial management practices.

Whilst many of the reforms that form part of this financial management strategy have commenced in a phased manner, over the last ten years, and much has been done to provide support, training and capacity building, it has become imperative to strengthen the enforcement provisions enabled in the MFMA to respond to various challenges in the sector.

The Auditor-General has consistently highlighted several issues in reports on local government audit outcomes that include persistent non-adherence to relevant laws and regulations and financial management policies, as well as the need to improve governance arrangements. A significant number of municipalities continue to incur unauthorised, irregular as well as fruitless and wasteful expenditure (UIFWe), which in itself may constitute financial misconduct. The non-compliance with the MFMA and its supporting regulations continue to persist largely due to lack of proper consequence management for accountability failures and transgressions.

Section 62 of the MFMA sets out the general financial management responsibilities of the accounting officer. The accounting officer is required to take all reasonable steps to ensure that the resources of the municipality are utilised effectively, efficiently and economically and that UIFWe are prevented. The same responsibilities have also been placed upon senior managers and other municipal officials. In addition, section 62 also obliges the accounting officer to ensure that disciplinary actions 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 of the MFMA.

The accounting officer may delegate the afore-mentioned function to other relevant senior managers within the municipality or municipal entity. Therefore, the accounting officer or the delegatee will deal with referrals for officials below the accounting officer and mayor or designated official in the case of a municipal entity will deal with referrals relating to the accounting officer.

To give effect to the priorities outlined in the strategic objectives of government, and to address requests to provide regulatory consistency in relation to processing allegations of financial misconduct, the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (the Regulations) were promulgated on 31 May 2014 to introduce the consequence management regulatory framework from a MFMA perspective. This regulation is meant to complement the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA), as amended, and the Regulations issued in terms thereof and hence it must be read together.

Objective and overview

The Regulations will support measures to expeditiously address financial misconduct and related financial mismanagement.

The objective of the Regulations is to set out processes and procedures that a municipality and municipal entities must follow when dealing with allegations of financial misconduct. The Regulations apply to all officials and political office-bearers within municipalities and municipal entities.

The Regulations consist of four chapters. Chapter one contains the definition of terms that are used in the Regulations.

Chapter two deals with the manner in which allegations of financial misconduct should be reported within municipalities and municipal entities, including simultaneous reporting of all allegations of conduct that may constitute an offence to the South African Police Service for criminal investigation, the establishment and functioning of the disciplinary board, preliminary and full-scale investigations of allegations of financial misconduct and the submission of the necessary reports. The Regulations require that the disciplinary board be an independent advisory body that will assist the municipal council or the board of directors of a municipal entity with the investigation of allegations of financial misconduct. The disciplinary board also makes recommendations based on the findings of the investigation on further steps to be taken regarding the disciplinary proceedings or any other relevant steps.

Chapter two also provides details with regard to the composition of the disciplinary board, including those persons that are disqualified from serving on the board. By disqualifying certain persons on the board, especially political office-bearers, the Regulations ensure that there is clear separation of responsibilities and accountability between employer and employee. The chapter sets out the manner in which the council or the board of directors must refer allegations of financial misconduct to the disciplinary board, and the timeframes within which the board must initiate investigations. Where the disciplinary board misses the timeframes as outlined in the Regulations, this must be recorded, and reasons provided as why the timeframes were missed and this should be utilised during the hearing stage in the event where *technical points of law are raised* for non-adherence to the regulatory timelines.

The rationale for the proposed composition of the disciplinary board was to ensure that there are sufficient skills present to perform the activities of the board. It is, therefore important that appropriately experienced and skilled persons are appointed to the disciplinary board to ensure that the board conducts its activities in accordance with the applicable legal framework in a procedurally fair manner. In the event that the disciplinary board recommends that the allegation be further investigated by an external investigator, the Regulations provide for the framework within which the external investigator must be appointed.

The Regulations further provide for the creation and submission of reports to the council or the board of directors by the external investigator. The investigation must be concluded and a report submitted within 30 days of referral by council or board of directors. The MSA provides for the conclusion of disciplinary proceedings within 90 days.

Chapter three deals with instances where a financial offence has been committed by a political office-bearer of the municipality or a member of the board of directors of a municipal entity, for purposes of section 173(4) and (5) of the MFMA. The municipality has to deal with the allegations in accordance with the procedure set out in item 13 of Schedule 1 of the MSA, if the alleged financial offence also amounts to a breach of the Code of Conduct for Councillors. In the case of municipal entities, the entity must deal with the allegation in terms of section 93L of the MSA, if the alleged financial offence also amounts to a breach of the Code of Conduct applicable to directors of a municipal entity.

Chapter four of the Regulations makes provision for the mayor of the municipality; the accounting officer of the parent municipality; the chairperson of the board of directors; the MEC for local government in the province; the national department responsible for local government; the provincial treasury; the National Treasury; and the Auditor-General to receive investigation reports and an information document.

The information document must clearly set out the name and position of the alleged wrongdoer, a summary of the facts of the allegation, including the monetary value involved, any disciplinary steps taken or to be taken against the alleged wrongdoer, or if no disciplinary steps have been taken, the reason for such a decision; in the case of a financial offence, the case number issued by the South African Police Service; and any steps taken or to be taken to recover any unauthorised, irregular or fruitless and wasteful expenditure incurred as a result of the alleged financial misconduct or financial offence in terms of section 32 of the Act.

The National Treasury or the provincial treasury may intervene by directing that an allegation be investigated if the council or board of directors has failed to act on allegations or recommendations.

Municipalities and municipal entities must report on all suspensions, disciplinary or criminal proceedings instituted in cases of financial misconduct in their annual reports, while they must also establish reporting procedures for persons to report allegations of financial misconduct and financial offences on a confidential basis.

It is important for municipalities and municipal entities to ensure that all allegations of financial misconduct that also amount to financial offences as defined in terms of section 173 of the MFMA, are reported to the relevant authorities. This will ensure that if an alleged wrongdoer resigns whilst investigations or disciplinary proceedings, consequence management will still continue through the criminal justice system. In the event that an alleged wrongdoer resigns whilst disciplinary proceedings are ongoing, all investigations including disciplinary proceedings should continue against the alleged wrongdoer within the 30-day notice period. This will ensure that cases do not unnecessarily stall and frustrate proceedings. It will, however, be important in this instance to ensure that the method of delivering the notice of suspension setting out particulars of the allegation and plans to investigate is appropriate to prove receipt thereof by the recipient. This is usually done via registered post or acknowledgement of the notice or through an email and enabling of the “delivery “and “read” receipt options when sending all emails in order to counter claims on non-receipt of the communication.

To prevent abuse of the system, municipalities and municipal entities must consider including a requirement for any potential employee to disclose any resignations by that applicant, any investigation or any disciplinary proceeding that were initiated against that applicant in any of his/her previous roles. Any future employer must include this matter as a condition of appointment with automatic termination for non-disclosure.

Municipalities must take note of section 57A(6) of the Municipal Systems Act, as amended, which requires a municipality to maintain a record that contains the prescribed information regarding the disciplinary proceedings of staff members dismissed for misconduct and who resigned prior to the finalisation of the disciplinary proceedings. Additionally, section 57A(7) requires a copy of this record to be submitted to the MEC for local government on a quarterly basis.

Process initiated before the promulgation of the Regulations

If an allegation was reported before the promulgation of the Regulations, municipalities should deal with it in terms of the law that was applicable at the time the offence was committed. The parties can, however, agree to utilise the Regulations provided that there is written agreement to that effect.

Process to follow after the promulgation of the Regulations

If an allegation is reported after 1 July 2014, the provisions of the Regulations must be fully implemented.

Synergy with other local government reforms

The Minister of Cooperative Governance and Traditional Affairs promulgated Disciplinary Regulations for Senior Managers (Disciplinary Regulations) in terms of the MSA. The Disciplinary Regulations are limited in their application, as they deal with general acts of misconduct and not financial misconduct for purposes of the MFMA, and they apply to accounting officers and section 56 managers in municipalities only.

The processes to be followed are now interlinked, as the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings deal with processes and procedures regarding the reporting of allegations of financial misconduct and financial offences and any internal investigations to be undertaken and the conclusion thereof.

Disciplinary proceedings will be dealt with in terms of the Disciplinary Regulations for Senior Managers or the collective bargaining agreement between the South African Local Government Association (SALGA) and relevant municipal unions within the prescripts of the law. All issues that are not covered in the Disciplinary Regulations for Senior Managers relating to financial misconduct will be dealt with in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. The Regulations also reinforce the prohibition of employment of officials found guilty of financial misconduct for a period of 10 years in the local sphere of government.

The Regulations, therefore, provide a framework that is consistent with the provisions of the MFMA and the MSA. The effective implementation of these Regulations is intended to address the current gaps identified in dealing with financial misconduct and financial offences. Please refer to the step-by-step flow chart attached as annexure A which explains the process.

Clarification of overall intention and spirit of the Regulations

Section 40 of the Constitution of the Republic of South Africa provides that government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Furthermore, section 41 of the Constitution goes further by requiring that each sphere of government and all organs of state must, amongst others, cooperate with one another in mutual trust and good faith by informing one another of, and consulting one another on matters of common interest and to avoid legal proceedings against one another. In addition, section 151(4) of the Constitution provides that national and provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

The Regulations in no way impede the executive authority of municipalities or their ability to make decisions. It is important to note that accountability to make decisions and act with regard to allegations of financial misconduct still vests with the municipal council or the board of directors in case of municipal entities. Therefore, the secondary and complementary part is when a municipal council or municipal officials do not act within a reasonable time or at all, as stipulated in the Regulations, then there are options for the provincial or national treasuries to act as part of our system of cooperative governance as this relates to matters of public resources and public funds. Municipalities can also strengthen current council policies dealing with disciplinary matters to clearly stipulate the decision-making powers of council and other relevant municipal structures.

The Regulations provide for the disciplinary board to conduct a preliminary investigation into the allegation and if need be, a full investigation to determine the merit of an allegation of financial misconduct. The disciplinary board does not necessarily have to conduct such investigations itself. A disciplinary board can request existing structures within the municipality, province or national government to conduct such investigations and provide the necessary reports with recommendations in terms of regulation 8 of the Financial Misconduct Regulations. For this purpose, the accounting officer should ensure that a council-approved delegation is in place that determines the scope of the disciplinary board's responsibilities, powers and arrangements to ensure operational efficiency and effectiveness, as well as timely and expeditious conclusion of matters referred to it.

Clarification of specific provisions within the Regulations

Reporting of allegations of financial misconduct and ensuring confidentiality

Any person must report an allegation of financial misconduct in terms of regulation 3(1) on a confidential basis in accordance with the reporting procedures adopted in the relevant council policy of a municipality or a municipal entity, as required by regulation 17.

The municipality and the municipal entity must make public the reporting procedures in accordance with section 21(1)(a) and (b) of the Municipal Systems Act and the municipal entity's defined policies. The accounting officer can determine the form and manner of the reporting procedures, which should be approved by the council and by the board of directors in the case of a municipal entity.

The Regulations require the person to whom an allegation of financial misconduct has been reported to treat the report in a confidential manner. The accounting officer or municipal council may not utilize municipal resources to delay or frustrate the process, including to engage in unnecessary legal costs to defend municipal officials or councillors implicated in such wrongdoing.

Reporting lines

Regulation 3(1)(b) sets out the reporting lines for allegations of financial misconduct against “all officials other than the accounting officer” of a municipality. The term ‘official’ is defined in the MFMA to include an employee of a municipality or municipal entity. If we apply the definition to regulation 3(1)(b), the implication is that the same officials who are included under regulation 3(1)(a), namely the chief financial officer and senior managers, will also be included under regulation 3(1)(b). The reporting of allegations against the chief financial officer and senior managers must be done under regulation 3(1)(a).

Regulation 9(1) specifies the reporting lines for allegations of financial offences against councillors and members of the board of directors in municipal entities. Please note that the reporting lines for officials in municipalities and municipal entities are already clearly spelt in regulation 3(1), hence it was not repeated in regulation 9(1). Therefore, allegations of financial offences against officials in municipalities and municipal entities must be reported as per the reporting lines in regulation 3(1). Anyone can report allegations of financial misconduct. There must be reporting procedures for persons to report allegations of financial misconduct and financial offences on a confidential basis and this process and procedure must be published as required in terms of regulation 17.

Establishment of disciplinary board and its functioning

Regulation 4(1) requires the municipal council to establish a disciplinary board to investigate allegations of financial misconduct in the municipality or municipal entity, and to monitor the institution of disciplinary proceedings against an alleged transgressor. The process of appointment of the disciplinary board members must be done in accordance with a process determined by the municipal council or board of directors. In this regard, it is recommended that the accounting officer nominates the members that will serve on the disciplinary board and the municipal council will establish the disciplinary board, i.e., appoint those members, through a council resolution. There is no need for municipalities or municipal entities to adopt a process which will attract unnecessary cost or prolong the process.

In terms of regulation 4(2), a disciplinary board is an independent advisory body that assists the council or the board of directors with the investigation of allegations of financial misconduct and provide recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken. As such, a disciplinary board is not a committee of council within the context of section 79 of the Municipal Structures Act.

A municipal council or board of directors of a municipal entity is required to have an appropriate policy in place to ensure the independence of disciplinary board members. For example, a policy may require members to complete an independence declaration when appointed to the board and at each meeting of the board thereafter, and to notify the council or board of directors of any conditions that may affect the members’ independence. This means officials from national or provincial treasury or from another municipality or municipal entity serving on the board, do so independently of their employer.

Composition of a disciplinary board

Regulation 4(3) prescribes a maximum number of five members of the disciplinary board for a three-year term. The three-year term may be extended by the municipal council or board of directors, as appropriate, through a resolution to ensure continuity in terms of the functionality of the board.

It is important to note that any extension of the term of the disciplinary board must be concluded before the current term expires.

The municipality may decide the duration of the extension however, this should not exceed three years at a time. Therefore, it is recommended that there should be a review once every three years in order to determine whether the municipality or municipal entity should extend the term of the current disciplinary board or appoint a new disciplinary board based on the recommendations of the accounting officer. This assessment should preferably be based on grounds of functionality as it is not advisable to replace or change a functional disciplinary board.

The Regulations propose that the disciplinary board be composed of the head of internal audit or a representative performing internal audit functions, one member of the audit committee, a senior legal manager, a representative of the National Treasury or the provincial treasury; and any other person that the municipal council or board of directors of a municipal entity deem fit and proper. While these provisions are not mandatory, the council or board of directors should ensure that the board is composed of suitably skilled and qualified persons best suited to perform the functions of the disciplinary board, considering the nature of local government legislation.

Regulation 4(5) outlines persons that are disqualified from being members of a disciplinary board and recommends officials that may be appointed to be part of a disciplinary board. Municipalities and municipal entities must establish controls to ensure that disqualified persons are prevented from serving on a disciplinary board. A disciplinary board that is not properly constituted may compromise the effective implementation of disciplinary proceedings or any other relevant steps to be taken against an alleged transgressor. It may even compromise the validity of decisions taken.

The Regulations provide that a disciplinary board established by a district municipality or an equivalent provincial or national structure established for a similar purpose may, with approval of the district municipality or provincial or national structure, be used as a disciplinary board for the municipality or municipal entity if the latter do not have sufficient capacity to establish a disciplinary board. Municipalities who use the shared service must agree on how the shared disciplinary board will operate. Therefore, there should be a service level agreement in place to deal with the functionality of the disciplinary board, between the various participating municipalities or municipal entities, including cost sharing, reporting etc. The appointment of external persons to serve on a disciplinary board is, therefore, discouraged on the grounds of probity in using public funds.

It should be noted that the appointment of treasury officials to the disciplinary board is not mandatory and should not be used as a reason not to establish a disciplinary board. The functioning of the disciplinary board should not be impeded by virtue of not having treasury officials on the board. Treasury officials may assist a disciplinary board in an advisory capacity, as and when required.

Should a member of the audit committee also be appointed to the disciplinary board and should the audit committee member's term expire before that of the disciplinary board, the council or the board of directors may decide whether to retain the former member of the audit committee as a disciplinary board member or replace him or her. It is however important that this specific issue should not compromise the functionality of the disciplinary board.

With regard to the remuneration of audit committee members when they serve on a disciplinary board, it is important that municipalities and municipal entities be guided by the scope of work of the disciplinary boards.

The scope of work of a disciplinary board is significantly less than that of the audit committee, hence the remuneration aspect would have to be aligned accordingly. To guide the functioning of a disciplinary board, it is advised that the board should have a formal term of reference approved by the municipal council or board of directors to determine the scope of its responsibilities and powers. The terms of reference could include details in respect of the following:

- the delegated authority and mandate of the disciplinary board;
- the composition of the board;
- the purpose and objectives;
- the term of office;
- arrangements regarding meetings;
- arrangements regarding investigations, including the appointment of an investigator or investigating team; and
- monitoring and reporting requirements

Preliminary and full investigations of allegations of financial misconduct

Who conducts the preliminary investigation and what is its purpose?

Regulation 5(1) requires a municipal council, board of directors or accounting officer of a municipality or municipal entity, if satisfied that there is reasonable cause to believe that an act of financial misconduct has been committed, to refer the matter to the disciplinary board within seven days upon receiving a report of alleged financial misconduct to conduct a preliminary investigation into the allegation.

Depending on the outcome of the preliminary investigation, the disciplinary can either recommend a full investigation of the allegation or terminate the investigation if it finds that the allegation is frivolous, vexatious, speculative or obviously unfounded.

If the disciplinary board determines that the allegation is founded, a full investigation must be conducted by the disciplinary board; the provincial treasury or the National Treasury, but only if the designated official or municipal entity fails to investigate an allegation of financial misconduct or financial offence. The accounting officer is primarily responsible to ensure effective investigations are undertaken and concluded within a reasonable time, with appropriate recommendations for implementation of corrective actions. Any delays in this process must be reported to council and submitted to the Provincial and National Treasury as the accounting officer will be failing in his/her fiduciary responsibilities under the MFMA.

Where the cost, the seniority of the alleged transgressor and the seriousness or sensitivity of investigating the alleged financial misconduct, warrants such a step, the investigation may be conducted by-

- (i) a person appointed by the council or board of directors who has appropriate specialist expertise and who is not an official of the municipality or municipal entity; or
- (ii) an independent team of investigators appointed by the council or the board of directors, in accordance with the applicable supply chain management prescripts.

The regulations provide for a full-blown investigation to be conducted when the preliminary investigation warrants such a step. The *Pietersen v S* (A309/2017) [2019] ZAWCHC 93 (6 February 2019) court case is a good point of reference when conducting a full-blown investigation. Whilst this matter deals with financial offences as defined in section 173 of the MFMA, it may be used as a guide when trying to establish intent or negligence on the part of the alleged wrong doer. Other related cases may be accessed using the following link: <http://www.saflii.org/>.

Regulation 6(8) guides the municipal council or board of directors on how to proceed when the investigator's report recommends that disciplinary processes be instituted against the alleged wrongdoer. Regulation 6(8) therefore provides the synergy with existing reforms, and it also gives effect to section 171(4)(b) of the MFMA. Section 171(4)(b) of the MFMA provides that a municipality must, if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the MSA, read with schedule 2 of that Act. The intention behind regulation 6(8) was therefore to give effect to section 171(4)(b) of the MFMA, hence the cross-reference to the MSA regulations in relation to senior managers and the collective bargaining agreement for officials below senior management as acknowledged in section 67 of the MSA.

Addressing allegations of financial offences against councillors or members of the board of directors

Whilst the majority of actions by councillors or members of the board of directors in municipal entities will fall within the ambit of the Code of Conduct for Councillors or members of the board of directors, there will also be instances where the actions of councillors or members of the board of directors will fall outside their respective Codes of Conduct. It is important to note that chapter 3 of the regulations deals with two scenarios, namely, (1) where the actions of the councillor or member of the board of directors for purposes of section 173 of the MFMA also breach their respective Codes of Conduct and (2) where their actions do not breach their respective Codes of Conduct.

The intention behind regulations 11 and 12 was to provide municipal councils and board of directors of municipal entities clarity on proceeding in cases where the actions of their members do not breach their respective Codes of Conduct. In this way, all roles currently created or existing under the Code of Conduct for Councillors i.e. Speaker and Mayors, will be acknowledged whenever allegations are dealt with in terms of the Code of Conduct for Councillors.

Regulations 11 and 12 require the appointment of a designated official who will receive, investigate and report on allegations of financial offences against the councillors and members of the board of directors in municipal entities. It was left to the municipal council or the board of directors (in cases of municipal entities) to decide and nominate for themselves who this person will be, given that this aspect is only applicable where the allegation is against a councillor or a member of the board of directors.

Intervention by National or Provincial Treasury

Regulation 19 allows the National or Provincial Treasury to intervene and direct that allegations be investigated in cases where a municipality, a municipal entity or a designated official fails to act on such allegations. It is important in this instance to understand the context within which the term 'intervention' is used.

The term 'intervention', for purposes of the regulations, is used within the context of instances where the municipal council fails to act on allegations of financial misconduct as defined in section 171 and 172 of the MFMA. It is not used within the context of section 139 of the Constitution of the Republic of South Africa.

To improve transparency, provision has also been made in the Regulations for municipalities and municipal entities to report on all suspensions, disciplinary or criminal proceedings instituted in their annual report.

As part of the normal municipal audit cycle, the auditor-general audits compliance with laws and regulations. It therefore follows that the auditor-general will audit whether allegations of financial misconduct and financial offences were dealt with in terms of the financial misconduct regulations. It is important for accounting officers to introduce and maintain appropriate tracking mechanisms which will ensure that allegations are appropriately dealt with and that relevant documents are safeguarded.

Municipal Public Accounts Committee and the Disciplinary Board and other committees within municipalities

During the countrywide workshops on the Regulations there were discussions on the potential conflict or duplication of functions between the Municipal Public Accounts Committee (MPAC) and the Disciplinary Board (DC Board) in so far as it relates to the council committee appointed in terms of section 32(2) of the MFMA to investigate the recoverability of irregular expenditure. Whilst we have taken note of the matters raised in support of this assertion, the clarification provided below will address any confusion which might exist in this regard.

In August 2011, the National Treasury and the Department of Cooperative Governance and Traditional Affairs jointly issued a guide on the establishment of MPACs. This guide explicitly stated that the MPAC, once established, is a committee that will exercise oversight over the executive obligations of the municipal council. The powers and functions of MPACs were further entrenched through the introduction of section 79A in the Municipal Structures Amendment Act, 2021 which now confirms the existence of MPACs as a committee of council including confirmation of its role insofar as it relates to UIFW recommendations, amongst others.

Section 32(2) of the MFMA states that a municipality must recover, amongst others, irregular expenditure unless it is certified, after an investigation by a council committee, as irrecoverable and be written off. We have noted that in most instances municipalities utilise the MPAC for purposes of MFMA section 32 investigations. It is expected that such investigations are referred to the administration, and in instances of financial matters, to the internal audit who must provide clear recommendations of recovery or write off the irregular expenditure.

The Regulations make provision for the establishment of a Disciplinary Board which will receive and investigate allegations of financial misconduct within municipalities. It is important to note that this board is made up of municipal officials and external representatives. Councillors are however prohibited from serving on this board.

The main purpose of this board is to assist the Accounting Officer to discharge his or her responsibility to institute disciplinary proceedings against officials who commit acts of financial misconduct as required by section 62(1) of the MFMA.

Both structures have different functions within the municipalities and their representation is also fundamentally different in that the MPAC consists solely of councillors whereas the DC Board is made up of officials.

However, in the unlikely event that there is a duplication of functions, we recommend that the respective terms of reference be amended to ensure that all the investigative powers relating to allegations of financial misconduct vest solely with the DC Board. MPACs is however advised to have “consequence management” as a standing item on its agenda to enable it to track progress on the implementation of consequence management linked to transactions that has been recommended to council for write-off or recovery.

The same applies to the utilisation of the audit committee for purposes of the investigation of allegations of financial misconduct. The audit committee consists solely of external persons whereas the disciplinary board is composed of municipal officials or external representative and only one member of the audit committee.

Although section 166 of the MFMA allows council to provide the audit committee with some investigative powers, it is our understanding that the nature of such investigation is normally from an institutional perspective whereas the nature of the disciplinary board investigation relates to the conduct of individuals within the municipality or municipal entity. Municipalities and municipal entities are required to utilise the disciplinary board as a regulated structure to dispense with these matters and to make recommendations to Council for final decisions. This will also assist during the external auditor, performed by the Auditor-General.

Implication of Protection of Personal Information Act on Reporting and Publication of Information in term of the Regulations

It is important for municipalities and municipal entities to note that the Protection of Personal Information Act (POPIA) will apply when reporting or when municipalities or municipal entities process personal information as required in terms of the Financial Misconduct Regulations. Therefore, municipalities and municipal entities must comply with POPIA. However, municipalities and municipal entities must take note of section 6 of POPIA which makes provision for certain exclusions and section 11 which makes provision for justifications.

Names of provincial officials responsible for monitoring implementation of the Regulations

Although the Regulations were promulgated by the Minister of Finance, the MFMA does assign oversight responsibilities to the provincial treasuries through the MEC's for Finance to oversee the implementation of the MFMA in their respective provinces. It is for this reason that officials have been identified who will assist with the monitoring responsibilities of the implementation of the Regulations.

Monitoring will entail, regular follow up by provincial officials on status of allegations, actions taken, reports produced, council resolutions and propose interventions, to the MEC for Finance where actions are not taken in terms of the Regulations.

The provincial treasuries will maintain a database of all allegations against officials and all those found guilty of financial misconduct. Regular feedback must also be provided to the respective provincial legislatures to enable oversight over municipalities. This information will be shared with other government departments who have other legislated responsibilities in this regard. These persons will also be the first line of support in the provinces should municipalities or municipal entities need any assistance regarding the implementation of the Regulations.

Please see below names of provincial officials responsible for monitoring implementation of the Regulations:

Name	Province	E-mail Address	Office number
Templeton Phogole	Eastern Cape	Templeton.Phogole@treasury.ecprov.gov.za	(040) 101-0286
Herman Leburu	Free State	leburu@treasury.fs.gov.za	(051) 405-4784
Seipati Tsiu	Gauteng	Seipati.tsiu@gauteng.gov.za	(011) 227-9063
Phehello Moloi	KZN	Phehello.Moloi@kzntreasury.gov.za	(033) 897-4664
Gladys Rapholo	Limpopo	rapholo.gladys@limpopo.gov.za	(015) 291-8444
Edwin Nkuna	Mpumalanga	ennkuna@mpg.gov.za	(013) 766-8713
Lareze Petersen	Northern Cape	Ldavid@ncpg.gov.za	(053) 830-8200
Sello Mokwepa	North West	smokwepa@nwpg.gov.za	(018) 388-4070
Niezel Palmer	Western Cape	Niezel.Palmer@westerncape.gov.za	(021) 483-6646

Conclusion

It is important that the accounting officer ensures that this Circular together with the Regulations is brought to the attention of the Municipal Council and other relevant officials within municipalities and municipal entities.

To better support the implementation of the Regulations, the National Treasury has developed a process flowchart which explains step-by-step process to be followed. The flowchart is attached as annexure A. This Circular should be communicated within the municipality and especially to the senior manager responsible for Human Resources, Chief Finance Officer and Internal Audit to enable implementation and improvements to processes.

This circular must also be read together with MFMA Circular 121 and the Consequence Management and Accountability Framework – An MFMA Perspective.

All requests for assistance should be addressed to the postal details below or email mfma@treasury.gov.za.

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February 2023**

Annexure A: Flowchart aligning processes in the MFMA and MSA