NATIONAL TREASURY

MFMA Circular No.68 (As revised April 2026)

Municipal Finance Management Act No. 56 of 2003

Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFWE)

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1. Purpose of the Circular

This Circular aims to clarify the procedures for dealing with unauthorised, irregular, fruitless, and wasteful expenditure (UIFWE) as per the Municipal Finance Management Act 56 of 2003 (MFMA) to create a common understanding of the processing of UIFWE. Municipalities are organs of state within the local sphere of government that collect monies from the public in the form of rates, levies, surcharges, fees, and service charges; receive grants; invest surplus cash; and borrow for capital expenditure for long-term purposes or for bridging finance for short-term needs. These resources are appropriated by the Municipal Council to fulfil its powers and functions, primarily to deliver services in accordance with its mandate as set out in sections 151,153 and 156 of the Constitution.

In terms of section 4(2)(a) of the Municipal Systems Act 32 of 2000 (Municipal Systems Act), the Municipal Council must use the resources of the municipality in the best interest of the local community. This duty is extended to individual councillors through the Code of Conduct for Councillors, which states that a councillor must:

(i) "perform the functions of office in good faith, honestly and in a transparent manner, and

(ii) at all times act in the best interests of the community and in such a way that the credibility and integrity of the municipality are not compromised."

Equally, the accounting officer and other officials have specific responsibilities in terms of the MFMA. Over recent years, the Auditor-General of South Africa (AGSA) has highlighted an escalating trend in UIFWE in municipalities and municipal entities. At the same time, some municipalities were uncertain about how UIFWE should be treated, who has the legislative authority to address such matters, the process to be followed, and how UIFWE should be recorded and disclosed in the annual financial statements.

To assist municipal officials, board of directors, and councillors, Annexures A to J provide information to support effective implementation in addressing UIFWE. It requires proactive, closer in-year monitoring, the processing of recommendations, and the taking of actions by the municipal administration, the Municipal Council, and the Board of Directors with reference to municipal entities. The Circular is supported by a template UIFWE register (Annexure A) and an example of a UIFWE policy (Annexure I), which will assist municipalities and municipal entities in recording, tracking, and managing UIFWE more transparently and accountably. The UIFWE register will be a central source of information on the UIFWE for municipalities, municipal entities, and external stakeholders, recording UIFWE transaction details, the type of expenditure, the person liable for the expenditure, and the measures taken by the municipality to address the matter.

Each Municipal Council and Board of Directors must adopt UIFWE policies and processes to:

a) Prevent the incurrence of UIFWE;

b) Identify and investigate UIFWE without delay;

c) To address and process identified instances of UIFWE conclusively; and

d) Implement consequence management where required.

2. Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFWE) definitions

2.1. Expenditure incurred

UIFWE must be recognised when expenditure is incurred and when the expenditure qualifies to be recognised as a UIFWE item per the UIFWE definitions in the MFMA. With regard to the word "incurred" within the context of UIFWE, it means recognising the effects of UIFWE transactions and other events when they occur, not when cash or its equivalent is received or paid. For example, in the case of irregular expenditure, where a supplier was appointed without following a supply chain management process, irregular expenditure must be recognised when the supplier issues the invoice to the municipality or municipal entity, not when the municipality or municipal entity actually pays the supplier.

2.2. Definition of unauthorised expenditure

Unauthorised expenditure is defined in section 1(1) of the MFMA as follows:

> ""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—
>
> (a) overspending of the total amount appropriated in the municipality's approved budget;
>
> (b) overspending of the total amount appropriated for a vote in the approved budget;
>
> (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
>
> (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
>
> (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
>
> (f) a grant by the municipality otherwise than in accordance with this Act."

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

With reference to MFMA section 1(1)(b) – a municipality's operational and capital budgets are divided into 'votes', representing budget components that have amounts appropriated for the financial year for different departments or functional areas. The Municipal Budget and Reporting Regulations (MBRR) prescribe the structure and formats of municipal budgets, including votes, in Tables A1 to A10. Votes are informed by Table A3 (Budgeted

Financial Performance: revenues and expenditure by municipal vote) and Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding). By implication, budget Table A4 (Budgeted Financial Performance: revenue and expenditure) is approved by the Municipal Council and must also be considered when determining unauthorised expenditure. In other words, when considering unauthorised expenditure from an operating budget point of view, both Table A3 and A4 (read in conjunction with the supporting table SA1) of the MBRR would have to be considered. Overspending must also be determined in relation to each of the votes on both the operational budget and the capital budget. Where the Municipal Council has approved a virement policy that allows the accounting officer to make limited shifts of funds between votes, this must also be considered.

With reference to MFMA, section 1(1)(c) – funds appropriated in a vote for a department may not be used for purposes unrelated to the functions of that department. In other words, an accounting officer or other official may not use funds allocated to one department for purposes of another department or for purposes that are not provided for in the budget. Where a Municipal Council has approved a virement policy, shifts made in accordance with that policy may be allowed and must be considered when reviewing such expenditure.

With reference to MFMA, section 1(1)(d) – in addition to appropriating funds for a department's vote, the Municipal Council may also appropriate funds for a specific purpose within a department's vote, for example, for specific training initiatives or a capital project. Funds designated for a specific purpose or project may not be used for any other purpose.

With reference to MFMA, section 1(1)(e) – the items referred to in the definition of 'allocation' are national and provincial conditional grants to a municipality and other 'conditional' allocations to the municipality from another municipality or another organ of state. Any use of conditional grant funds for purposes other than those specified in the relevant conditional grant framework is classified as unauthorised expenditure.

With reference to MFMA, section 1(1)(f) – section 67 of the MFMA regulates the transfer of municipal funds to organisations and bodies outside government. In terms of this section, a municipality may only provide grants to organisations and NOT individuals. Therefore, any grant to an individual is an unauthorised expenditure unless it is in accordance with the municipality's indigent policy or bursary scheme.

Therefore, valid expenditure decisions can only be made by the Municipal Council in the context of a budget or an adjustment budget. It follows that only the Municipal Council may authorise unauthorised expenditure, and that it must do so through an adjustment budget. This principle is further reiterated in section 32(2)(a)(i) of the MFMA, read with regulation 25 of the MBRR, which states that the municipality may authorise unauthorised expenditure in an adjustments budget that the Municipal Council approves. This is the rationale for the provisions in regulation 23(6) of the MBRR, which provides the legal framework for authorising unauthorised expenditure.

2.2.1. Expenditure not classified as unauthorised expenditure

Given the definition of unauthorised expenditure, the following are examples of expenditures that are NOT unauthorised expenditure:

(i) Any over-collection on the revenue side of the budget, as this is not an expenditure; and

(ii) Any expenditure incurred in respect of:

- any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA;
- re-allocation of funds and the use of such funds in accordance with a council-approved virement policy;
- overspending of an amount allocated by standard classification on the main budget Table A2 (Budgeted Financial Performance: revenue and expenditure by standard classification), as long as it does not result in overspending of a 'vote' on the main budget Table A3 (Budgeted Financial Performance: revenue and expenditure by municipal vote) and Table A4 (Budgeted Financial Performance: revenue and expenditure (read in conjunction with supporting Table SA1) of the MBRR; and
- overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding) of the MBRR, so long as it does not result in an overspending of a 'vote' on the main budget Table A5.

2.2.2. Unauthorised expenditure on "non-cash" expenditure items

Municipalities have raised concerns that non-cash items are being classified as unauthorised expenditure because the total budget has been exceeded. Such expenditure relates, amongst others, to debt impairment, depreciation, asset impairment, transfers, and grants, as set out in Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) of the MBRR. Although these expenditures are considered non-cash items, as there is no transaction with any service provider or supplier, an under-provision during the budget compilation process is a material misstatement of the surplus or deficit position of the municipality. This could result from poor planning, budgeting, or financial management, or from unforeseen events that led to asset and debt impairments after adopting the budget. In this regard, Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) must be read in conjunction with supporting Table SA1 of the MBRR.

While non-cash unauthorised expenditure might not have an initial cash outflow, it has future cash flow implications. For example, under-budgeting for service infrastructure depreciation harms tariff determination, leading to tariffs that do not include the full cost of replacing service infrastructure. The miscalculation of service tariffs will have a negative impact because the tariffs are not fully cost-reflective, leading to lower future cash collections than would be the case if depreciation were budgeted correctly.

2.2.3. Unforeseen and unavoidable expenditure

Unforeseen and unavoidable expenditure is discussed in section 29 of the MFMA and reads as follows:

"**29. Unforeseen and unavoidable expenditure**

(1) The mayor of a municipality may, in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.

(2) Any such expenditure—

(a) must be in accordance with any framework that may be prescribed;

(b) may not exceed a prescribed percentage of the approved annual budget;

(c) must be reported by the mayor to the municipal council at its next meeting; and

(d) must be appropriated in an adjustments budget.

(3) If such an adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised, and section 32 applies."

The framework referred to in section 29(2)(a) of the MFMA is prescribed in chapter 5 of the MBRR and contained in regulations 71 and 72. The following shall apply:

(i) If the amount the Mayor authorised as unforeseen and unavoidable expenditure exceeds the monetary limits set in regulation 72 of the MBRR, the amount in excess of the limit is unauthorised;

(ii) If the reason for the Mayor authorising the unforeseen and unavoidable expenditure does not fall within the ambit of regulation 71(1) of the MBRR, the expenditure is unauthorised;

(iii) If the reason for the Mayor not authorising the unforeseen and unavoidable expenditure falls outside the ambit of regulation 71(2) of the MBRR, the expenditure is unauthorised; and

(iv) If the council does not appropriate the expenditure in an adjustments budget that is passed within 60 days after the expenditure was incurred, the expenditure is unauthorised.

2.3. Definition of irregular expenditure

Irregular expenditure is defined in section 1(1) of the MFMA as follows:

"**'irregular expenditure'**, in relation to a municipality or municipal entity, means—

(a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;

(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;

(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

(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,

but excludes expenditure by a municipality which falls within the definition of 'unauthorised expenditure'."

In this context, 'expenditure' refers to any use of municipal or municipality entity funds, inclusive of grant funds accruing to the municipality or municipal entity, donations received and expenditure incurred financed from borrowings, that is in contravention of the following legislation:

- Municipal Finance Management Act 56 of 2003 and its regulations;
- Municipal Systems Act 32 of 2000 and its regulations;
- Remuneration of Public Office Bearers Act 20 of 1998 and its regulations; and
- The municipality's supply chain management policy and any by-laws giving effect to the municipality's supply chain management policy.

2.4. Definition of fruitless and wasteful expenditure

Fruitless and wasteful expenditure is defined in section 1(1) of the MFMA as follows:

"fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised. The fruitless and wasteful expenditure concept is founded on public administration and accountability principles to promote "efficient, economical and effective use of resources and the attainment of value for money". The idea is also founded on the fact that the Municipal Council, the Board of Directors in the case of a municipal entity, the Mayor, and municipal accounting officers have a fiduciary responsibility to ensure that municipal resources are used in the best interests of the municipality, the municipal entity, and the local community.

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

3. Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFWE) framework for municipalities – section 32 of the MFMA

3.1. Background to section 32 of the MFMA

Section 32 of the MFMA establishes the legal framework governing municipalities' handling of UIFWE once it has been identified. The section does not primarily regulate how such expenditure is prevented. Instead, it regulates what must happen after it occurs, including liability, recovery, council decision-making, reporting, and law-enforcement

referral. Section 32, therefore, forms the centrepiece of the MFMA's consequence-management regime.

Section 32 of the MFMA is based on the principle that municipal resources must be protected and that losses should not be automatically absorbed by the municipality when individuals are responsible for causing them. It introduces a statutory liability structure that complements, rather than replaces, common-law remedies and other legislation. This means that section 32 must be read together with labour law, criminal law, the Municipal Systems Act, the Municipal Supply Chain Management Regulations, the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (Financial Misconduct Regulations) and all other applicable legislation. The section, therefore, operates as part of a broader accountability system rather than as a stand-alone provision.

Section 32(1) of the MFMA establishes who may be held financially liable in the event of UIFWE. It identifies political office-bearers, accounting officers, and officials as potential responsible persons and links liability to deliberate or negligent conduct. The subsection also confirms that statutory liability under the MFMA exists in addition to any liability arising from common law or other statutes. In practice, subsection (1) requires municipalities to move beyond disclosure and to identify whether a specific person's conduct contributed to the expenditure.

Section 32(2) of the MFMA creates the statutory recovery rule. It provides that municipalities must recover UIFWE from the person liable unless the expenditure has been lawfully authorised or certified as irrecoverable and written off by the Municipal Council. This subsection makes recovery the default position rather than a discretionary option. This means that once UIFWE is identified, a liability assessment must be undertaken, and where the assessment confirms negligence or deliberate conduct, the municipality is obliged to institute recovery proceedings against the responsible official without delay.

Section 32(3) of the MFMA specifically addresses the position of the accounting officer when political or collective decisions of the Municipal Council, mayor, or executive committee may result in UIFWE. It provides that the accounting officer will not be liable for resulting UIFWE if the accounting officer has informed the relevant structure in writing that the decision is likely to cause UIFWE. The subsection, therefore, protects accounting officers who properly record their professional advice and reinforces the importance of written warnings and documented financial controls.

Section 32(4) of the MFMA establishes a mandatory reporting obligation on the accounting officer. It requires prompt written notification to the mayor, the MEC for local government, and the Auditor-General of South Africa of any instance of such expenditure, together with information on responsibility, investigations, recovery steps, and measures taken to prevent recurrence. This subsection ensures that UIFWE is treated as a governance matter and not merely an internal accounting issue. It promotes transparency and allows provincial and audit oversight bodies to monitor whether the municipality is taking appropriate action.

Section 32(5) of the MFMA clarifies that writing off UIFWE as irrecoverable does not remove accountability. Even where the Municipal Council has certified an amount as irrecoverable and written it off, disciplinary or criminal proceedings may still be pursued. The subsection, therefore, distinguishes between the accounting treatment of UIFWE and

the enforcement of misconduct. In practice, this means that municipalities may not treat write-off decisions as a substitute for consequence management.

Subsection 32(6) of the MFMA introduces a specific reporting duty on the accounting officer . It requires the accounting officer to report all cases of irregular expenditure that constitute a criminal offence, as well as cases of theft or fraud, to the South African Police Service. This provision emphasises that certain forms of irregular expenditure are not merely administrative failures but may involve criminal conduct requiring investigation by law-enforcement authorities.

Subsection 32(7) of the MFMA places a safeguard around this reporting duty. It requires the Municipal Council to ensure that matters are reported to the police if the charge involves the accounting officer or if the accounting officer fails to make the required report. This ensures that reporting obligations cannot be avoided where the accounting officer is personally implicated or fails to act. The subsection therefore reinforces the Municipal Council's oversight responsibility in enforcing accountability at the senior management level.

Therefore, section 32 of the MFMA establishes a complete lifecycle for dealing with UIFWE. It begins with identifying liability, continues with investigation and council decision-making, requires recovery where appropriate, mandates reporting to oversight bodies, and provides for disciplinary and criminal enforcement. The section, therefore, converts UIFWE from a reporting exercise into a structured accountability process. Its effective implementation depends on municipalities ensuring that investigation systems, council oversight processes, recovery mechanisms, and disciplinary procedures operate in an integrated manner throughout the financial year.

3.2. Statutory liability framework under section 32(1) of the MFMA

Against the background of section 32 of the MFMA, the practical interpretation of section 32(1) is set out below. This subsection serves as the liability foundation of the entire section 32, identifying the persons who may be held financially responsible and linking liability to deliberate or negligent conduct. A proper understanding of subsection (1) is therefore essential to the lawful application of recovery, disciplinary action, and council decision-making under the remainder of section 32 of the MFMA.

Section 32(1) of the MFMA establishes the statutory liability framework that applies when UIFWE occurs in a municipality. The provision must be read as a consequence-management and recovery mechanism. It determines who may be held financially liable, under what circumstances liability arises, and how that liability interacts with other legal remedies available to the municipality.

The opening words of section 32(1) of the MFMA, namely that the provision applies "*without limiting liability in terms of the common law or other legislation*", are critical. This wording confirms that section 32(1) does not replace or restrict other legal avenues for recovery. Instead, it creates an additional statutory basis for liability. A municipality may therefore rely on section 32(1) together with common-law claims such as breach of fiduciary duty, delicts, unjust enrichment, or contractual damages, as well as remedies available under labour law, the Municipal Systems Act 32 of 2000, the Criminal Procedure Act 51 of 1977, or anti-corruption legislation. The effect is that section 32(1) expands, rather than narrows, the municipality's ability to recover UIFWE including any losses and enforce accountability.

Section 32(1)(a) provides that a political office-bearer is liable for unauthorised expenditure where that office-bearer knowingly instructed an official to incur the expenditure or gave such an instruction after being advised by the accounting officer that the expenditure would likely result in unauthorised expenditure. The paragraph, therefore, targets situations in which political direction overrides the statutory budget framework. The key elements are knowledge and instruction. Liability arises where the political office-bearer understood, or reasonably ought to have understood, that the instruction would cause spending outside the approved budget. Municipalities must therefore ensure that advice from the accounting officer on budget compliance is properly recorded, as such records become critical evidence in determining liability under this paragraph.

Section 32(1)(b) of the MFMA provides that the accounting officer is liable for unauthorised expenditure that was deliberately or negligently incurred by that accounting officer, subject to subsection (3) of section 32 of the MFMA. This paragraph recognises the central role of the accounting officer in maintaining budget control and financial discipline. Liability does not arise merely because unauthorised expenditure occurred, but because the accounting officer caused or allowed it through deliberate action or negligent oversight. The paragraph, therefore, requires municipalities to assess whether the accounting officer failed to exercise reasonable budgetary control, failed to prevent overspending when it was foreseeable, or authorised expenditure despite knowing that funds were not available.

Section 32(1)(c) of the MFMA provides that any political office-bearer or official who deliberately or negligently commits, makes, or authorises irregular expenditure is liable for that expenditure. This paragraph applies broadly across the compliance and supply chain management environment. For instance, liability may arise where procurement rules were knowingly ignored, required approvals were bypassed, or officials failed to exercise the level of care expected in verifying compliance with legislation and policy. The paragraph, therefore, requires municipalities to determine not only whether procurement was irregular, but also whether a specific individual's conduct contributed to the irregularity.

Section 32(1)(d) of the MFMA mirrors paragraph (c) but applies to fruitless and wasteful expenditure. It provides that any political office-bearer or official who deliberately or negligently made or authorised such expenditure is liable for the resulting loss. The focus here is on preventability. Fruitless and wasteful expenditure typically arises where reasonable care could have avoided the cost, for example, through proper contract management, confirmation of delivery of services, verification of invoices, timely cancellation of unnecessary services, or compliance with payment conditions. Liability arises when the individual's conduct shows that the loss was reasonably foreseeable and preventable.

Section 32(1) of the MFMA must also be applied alongside the broader consequences-management framework of the MFMA. Once liability is established, the municipality must pursue recovery of the amount, institute disciplinary processes where applicable, and consider referral for criminal investigation in terms of section 173 of the MFMA or where the facts indicate possible fraud or corruption. Recovery may occur through civil processes, labour-law deductions, or other lawful mechanisms. Municipalities must therefore treat section 32(1) not merely as a reporting provision, but as a core enforcement tool supporting financial accountability.

In summary, section 32(1) creates a legally enforceable liability regime that operates

alongside common-law and statutory remedies. It requires municipalities to identify responsible individuals, assess whether their conduct was deliberate or negligent, and pursue recovery and consequence management accordingly. Effective application of this section depends on proper investigations, documented decision-making, and consistent implementation by Municipal Councils and accounting officers.

3.3. UIFWE liability assessment – deliberate or negligent action or inaction

In applying section 32(1) of the MFMA, municipalities must carefully assess the meaning of “deliberate” and “negligent” conduct, as liability depends on the presence of fault. Deliberate conduct refers to situations in which a person intentionally performs an act or omission that caused the UIFWE, knowing that the conduct was contrary to legal or financial requirements, or consciously disregarding the risk that it would lead to UIFWE. Deliberateness may be inferred where instructions were given despite warnings, where controls were intentionally bypassed, or where a person acted in reckless disregard of the rules.

For purposes of section 32, “deliberate” conduct also means intentional conduct that results in UIFWE, including instances where the person knew the applicable legal requirement or control and proceeded regardless. Deliberate conduct also includes conscious disregard of warnings, legal advice, audit findings, or prescribed controls, and this may be established by documentary evidence such as approvals, minutes, deviation records, delegations, and audit trails. Deliberate conduct does not require proof of fraud or corruption; the question is simply whether the conduct was intentional or carried out with conscious recklessness regarding compliance.

Negligent conduct, by contrast, does not require intention. It arises when a person fails to exercise the degree of care, skill, and diligence that could reasonably be expected from someone in that position. Negligence may be established where an official fails to exercise the degree of care, diligence, and skill that a reasonably prudent official would have exercised in the circumstances, for example, by omitting to ascertain the availability of budgetary provision prior to incurring expenditure, failing to verify compliance with prescribed supply chain management requirements, disregarding foreseeable risks, or neglecting to take reasonable and necessary steps to avert a loss that was reasonably foreseeable. The test is objective and considers what a reasonable official would have done in similar circumstances.

For purposes of section 32, “negligent” conduct also means a failure to exercise reasonable care expected from a person in the relevant role and delegation level. Negligence also includes approving expenditure or payments without performing basic compliance checks that were reasonably required and reasonably available, including checks on authority, procurement requirements, performance confirmation, pricing, and contract conditions. Negligence may exist even where the person subjectively believed the decision was beneficial, because the test is objective and focuses on whether a reasonable official, exercising due care and diligence, would have acted differently in the same circumstance. .

In applying section 32(1) of the MFMA, municipalities may encounter situations where an official contends that the expenditure was not intentional and was incurred in good faith. While good faith may be relevant to assessing whether conduct was deliberate, it does not, in itself, exclude liability where negligence is established. Section 32(1) links liability

to deliberate or negligent conduct. Acting without malice, personal gain, or dishonest motive does not automatically remove accountability if the official failed to comply with clear budget controls, supply chain management requirements, or financial management duties expected of a person in that position. The UIFWE assessment must remain objective and must focus on whether a reasonable official, faced with the same facts and responsibilities, would have acted differently.

In practice, municipalities must therefore treat fault determination as a structured assessment. Investigations must establish the facts, identify the decision-makers involved, evaluate whether the conduct was intentional or negligent, and determine whether that conduct caused the expenditure. Liability should not be imposed automatically, but once deliberate or negligent conduct is established, recovery becomes a statutory obligation rather than a discretionary choice.

3.4. Joint and several liability in the context of UIFWE recovery

In practice, UIFWE often results from the conduct of multiple people. Decision-making within municipalities is often collective or sequential. Instructions may originate at the political level, be implemented by senior management, and be processed by operational officials. In such cases, municipalities must consider the principle of joint and several liability when determining UIFWE recovery.

Joint and several liability arises where two or more persons, through their respective deliberate or negligent conduct, contribute to the same instance of UIFWE. In such circumstances, each person may be held liable for the UIFWE, even though their respective roles differed. The municipality is therefore not required to apportion the UIFWE to pursue recovery.

In applying joint and several liability, municipalities must first establish three elements through a proper investigation. First, the specific instance of UIFWE must be identified and quantified. Second, the individuals whose conduct contributed to the UIFWE must be identified. Third, it must be established that each such person acted deliberately or negligently and that their conduct had a causal link to the UIFWE.

Joint and several liability is particularly relevant in cases involving procurement deviations, contract extensions, budget overspending, or failure to terminate contracts timeously. For example, where the accounting officer failed to implement an adequate system of internal control and a supply chain official processed a non-compliant award without verification, each may have contributed to the resulting irregular expenditure. In such cases, the municipality is not required to determine which individual was “most responsible” before initiating recovery.

Municipalities must, however, exercise this principle lawfully and proportionately. Investigations must clearly record the factual basis for attributing fault to each individual. Municipal Council resolutions must identify the persons to be held liable and the legal basis for such liability. The principle of joint and several liability must also be applied together with labour law and due process requirements. Disciplinary proceedings must still assess individual misconduct, and recovery through salary deductions must comply with applicable labour legislation.

In summary, where two or more political office-bearers or officials deliberately or negligently contributed to the same instance of UIFWE, municipalities may hold them

jointly and severally liable for the resulting expenditure.

3.5. Meaning of "official" in the context of UIFWE recovery

For purposes of section 32 of the MFMA, the term "official" is defined broadly and is not limited to permanent employees. It includes employees, persons seconded to the municipality to work as staff, and persons contracted to perform staff functions. The definition is functional and depends on whether the person performs duties within the municipal administration.

This broad definition is important for UIFWE recovery. Liability under section 32 may attach to any official who deliberately or negligently committed, made, or authorised UIFWE. Recovery is therefore not confined to permanently appointed staff. For example, a fixed-term Accounting Officer who negligently authorises expenditure beyond the approved budget may be held liable.

The definition also covers seconded officials from other municipalities, provincial or national government and contracted staff who perform municipal functions. A seconded official who bypasses supply chain management procedures, or a contracted SCM advisor who negligently approves non-compliant specifications, may fall within the definition of an official for purposes of liability.

Municipalities must assess the substance of the working relationship when determining liability. Any person who performed staff functions or exercised delegated authority and whose deliberate or negligent conduct contributed to UIFWE may be held liable under section 32.

3.6. UIFWE recovery from suppliers, former employees and councillors

Section 32(1) of the MFMA provides that liability for UIFWE applies "without limiting liability in terms of the common law or other legislation." This confirms that the statutory liability under section 32 does not exclude other legal remedies available to the municipality, including recovery from suppliers, former employees, and councillors.

Where irregular expenditure results from supplier misconduct, such as misrepresentation, bid manipulation, or participation in an unlawful award, the municipality may pursue recovery based on contract law, unjust enrichment, delict, fraud, or anti-corruption legislation. For example, a municipality may set aside an irregular contract and recover payments where the supplier knowingly participated in the irregularity. It may also claim damages where fruitless and wasteful expenditure arose from defective performance, penalties, or avoidable interest caused by the supplier.

Section 32(1) also applies to political office-bearers and officials who deliberately or negligently committed, made, or authorised UIFWE. Resignation, retirement, or expiry of a contract does not extinguish liability. A former employee or councillor may still be pursued where their conduct caused the expenditure.

Recovery from former employees and councillors may proceed through civil action, acknowledgement-of-debt agreements, or other lawful means. While employment termination may limit internal disciplinary or deduction mechanisms, it does not remove the municipality's right to institute civil recovery proceedings.

3.7. Recovery of overpayments to councillors in terms of section 167 of the MFMA

Section 167(2) of the MFMA regulates the recovery of unauthorised remuneration or benefits paid to councillors. Councillors may receive only remuneration, allowances, and benefits within the upper limits determined under the Remuneration of Public Office Bearers Act 20 of 1998. Any amount paid in excess of those limits constitutes an overpayment and must be recovered by the municipality.

Where an overpayment is identified while the councillor remains in office, the municipality is required to initiate recovery without delay. The accounting officer must quantify the amount, notify the councillor in writing, and provide a clear calculation supporting the claim. Recovery may be implemented through structured deductions from the councillor's remuneration, subject to applicable legal limits and procedural fairness. The fact that the overpayment arose from an administrative error does not remove the obligation to recover the fund from the councillor.

Where the councillor has left office, the debt does not lapse. Termination of office does not extinguish or limit the municipality's right to recover any overpayment. The municipality must issue a formal demand for repayment and, if voluntary settlement is not secured, may institute civil proceedings. The overpayment remains a debt due to the municipality and must be pursued through lawful recovery mechanisms.

3.8. Judicial interpretation of section 32 of the MFMA (Mbambisa judgment)

The Supreme Court of Appeal in *Mbambisa and Others v Nelson Mandela Bay Metropolitan Municipality* (Case no 272/2023) [2024] ZASCA 151 clarified the proper interpretation of section 32 of the MFMA. The Court confirmed that section 32(1) establishes a statutory liability framework. Where a political office-bearer or official deliberately or negligently committed, made, or authorised UIFWE, personal liability follows once fault and causation are established.

The Court further held that section 32(2) imposes a mandatory recovery obligation. The municipality must recover the expenditure from the person liable unless a limited statutory exception applies. Recovery is the default consequence once the requirements of section 32(1) are met. A municipality may not decline recovery where deliberate or negligent conduct is proven.

The Court rejected the argument that value for money negates UIFWE recovery. The receipt of goods or services does not override the statutory duty to recover UIFWE incurred. UIFWE may only be certified as irrecoverable where recovery is legally or factually impossible. It may not be used to shield deliberate or negligent conduct.

The SCA judgment was taken on appeal to the Constitutional Court, but the application for leave to appeal was dismissed. The effect is that the SCA decision stands as a binding authority and must guide the interpretation and application of section 32 of the MFMA.

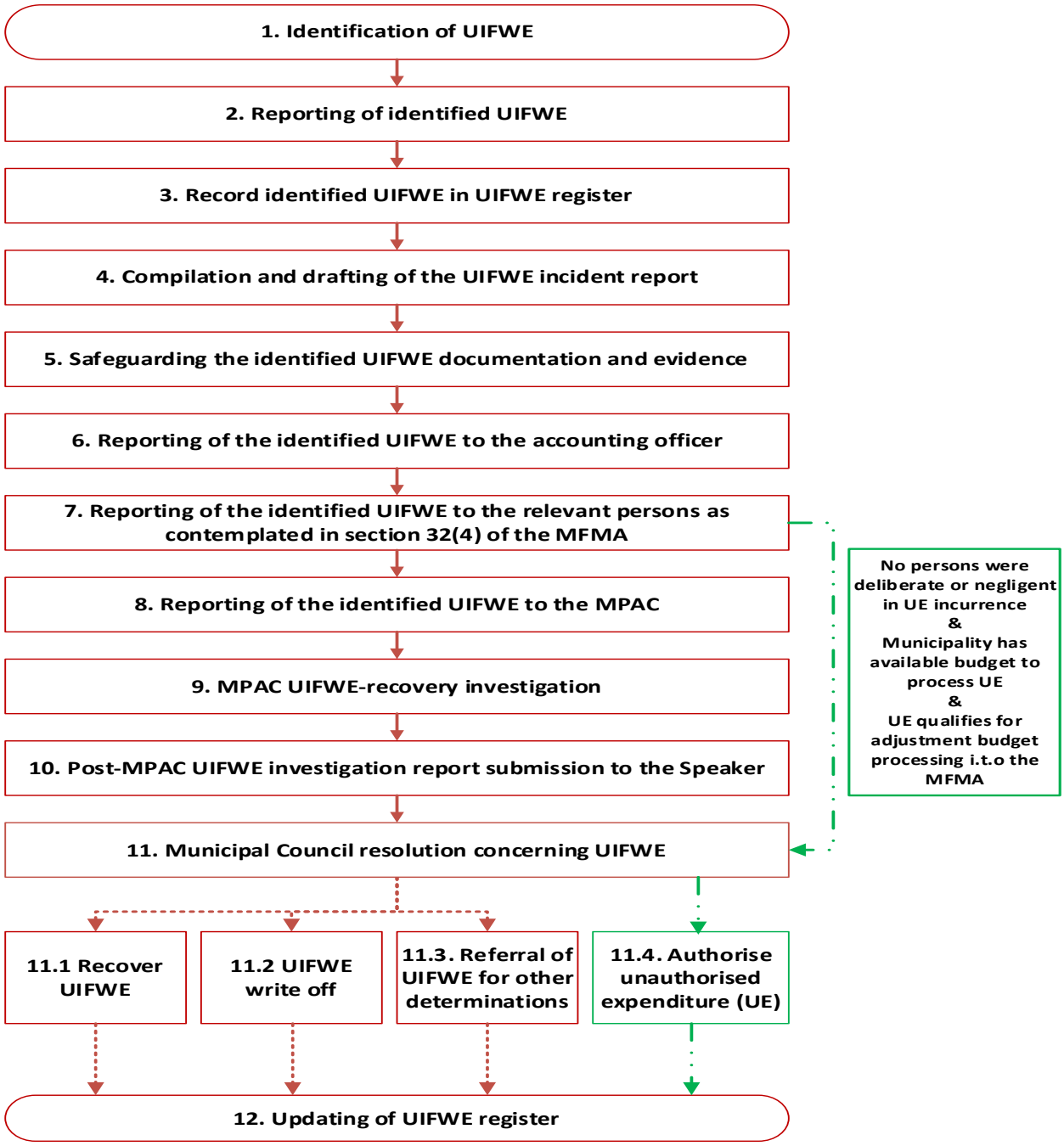
4. Processing UIFWE by a Municipality

4.1. Overview of the UIFWE process

Section 32 of the MFMA mandates that municipalities must act swiftly and decisively when faced with any UIFWE incurred. By embedding UIFWE process controls into everyday financial operations, municipalities uphold their fiduciary duties and mitigate the risk of repeated non-compliance. This Circular outlines a standardised UIFWE process flow designed to guide municipal officials and oversight bodies through every stage of UIFWE management. From the moment expenditure is flagged, through detailed incident reporting, evidence preservation, Municipal Public Accounts Committee (MPAC) scrutiny, and Municipal Council decision-making, each step is defined to promote consistency, legal compliance and timely remedial action as contemplated in section 32 of the MFMA.

To ensure consistent application across all municipal units, a proposed practical UIFWE process comprises the following key steps:

Diagram 1: Steps in a typical UIFWE process cycle:



Paragraph 4.6 of MFMA Circular No. 129 – Municipal Budget Circular for the 2025/26 MTREF, issued on 10 December 2024, sets out the special adjustments budget process for authorising unauthorised expenditure incurred in 2023/24. That process remains applicable. However, before the Municipal Council may authorise any unauthorised expenditure, the municipality must first assess liability in accordance with section 32(1) of the MFMA, as explained above. Only where the conduct in question was neither deliberate nor negligent may the Municipal Council consider authorising the unauthorised expenditure.

4.2. Identification of UIFWE

Municipal officials, internal audit units, external auditors and councillors must remain alert to any transaction or event that may constitute UIFWE as defined in the MFMA. This includes payments without prior budget authorisation, contraventions of the Municipal Supply Chain Management Regulations, or expenses incurred without receiving goods or services. Early detection is critical to enable prompt remedial action.

Triggers for identification include audit findings, whistle-blower reports, review of supplier invoices, and routine budget versus actual expenditure analyses. Where the municipality's internal controls detect anomalies, such as duplicate payments, accruals processed incorrectly, or non-compliant procurement processes, these should be evaluated against the UIFWE definitions. All municipal staff must be trained to recognise UIFWE indicators. Line managers should ensure that any suspected UIFWE is immediately flagged in writing to the municipal directorate's relevant senior manager/director, with sufficient detail to process the UIFWE incurred. Embedding UIFWE awareness into daily financial operations strengthens internal control and assists in fulfilling the municipality's fiduciary obligations in terms of the MFMA.

4.3. Reporting of identified UIFWE

Once UIFWE is suspected or confirmed, the senior manager/director of the relevant unit/directorate must submit a written notification to the municipality's Chief Financial Officer (CFO) within five working days. This notification must outline the nature of the expenditure, the estimated financial value, the relevant transaction date, and the basis for classification as UIFWE. Timely reporting ensures alignment with the MFMA's requirement for prompt corrective action. Upon receipt, the CFO must acknowledge the notification in writing and record the date of receipt in the UIFWE register.

4.4. Recording of identified UIFWE in the UIFWE register

All municipalities must maintain full and proper records of their affairs, as required by section 62(1)(b) of the MFMA. Accordingly, the accounting officers must ensure that the municipality has proper processes in place to record and manage UIFWE should it occur. Therefore, to comply with these provisions of the MFMA, accounting officers (who may delegate the task to the chief financial officer or any other senior manager in the budget and treasury office) must establish and maintain a UIFWE register. Ideally, a separate sub-register should be maintained for each type of expenditure to facilitate easier management, tracking and reporting.

Introducing a 'register' to capture UIFWE incurred, as set out in Annexure A, will assist municipalities in maintaining a complete and accurate record of UIFWE incurred and its

processing. The UIFWE register will further assist in preventing audit findings on the completeness of UIFWE incurred by the AGSA. The UIFWE register is also useful for tracking the progress in addressing the consequences flowing from such expenditures until all the issues that gave rise to the expenditures have been resolved in accordance with section 32 of the MFMA.

Annexure A sets out the minimum information that should appear in a UIFWE register. Municipalities are free to add further detail to the UIFWE register if they deem it necessary. This includes disaggregating into different categories to improve understanding by municipal management, councillors, and the general public. Using such information to explain matters in communications to the Municipal Council, the public, and other stakeholders can assist to address perceptions.

The accounting officers should implement appropriate controls to ensure that the UIFWE registers are updated at least monthly, including measures to ensure their accuracy and completeness. The registers should be supported by complete, accurate, and relevant supporting documentation that is easily accessible and available for verification. To this end, the accounting officer should clearly assign responsibilities for updating, maintaining, reviewing, and monitoring the UIFWE to individuals with the appropriate authority, experience, and skill level. It is best practice to assign the responsibility for updating and maintaining the UIFWE register to the municipality's CFO and/or Chief Audit Executive.

4.4.1. Quantifying the full extent of UIFWE

Municipalities must comprehensively quantify and record all UIFWE in the UIFWE register for disclosure in the annual financial statements, as required by section 125(2) of the MFMA. This includes any UIFWE identified during the reporting period, as well as amounts discovered after the reporting date but before the financial statements are authorised for issue. For example, multi-year contracts found to be non-compliant at any point must be measured from inception, ensuring that each year's spend is captured in the register and AFS disclosure notes as irregular expenditure. Where prior-period UIFWE only emerges in a subsequent financial period, the full rand value should be reconstructed and included in the current financial year's UIFWE register, with clear annotations that the amounts relate to earlier periods.

4.5. Compilation and drafting of the UIFWE incident report

After the initial notification of a UIFWE event, the relevant unit/directorate's senior manager/director must ensure that a detailed UIFWE incident report is compiled and accompanies the UIFWE register extract when submitted to the accounting officer. ***The UIFWE incident report, where possible, should include the reports of the persons who may be liable for the occurrence of the UIFWE.*** The report should include a timeline of events, identification of the relevant regulations or budget provisions breached, and an initial assessment of recoverability or write-off potential. It should be supported with all relevant supporting documents.

Where it is alleged that the UIFWE incurred is due to the actions or inactions, solely or collectively, of a senior manager, including the municipality's accounting officer, in the case of a senior manager, the municipality's accounting officer must take ownership of the UIFWE report that implicates a senior manager. Where the municipality's accounting officer is implicated in the UIFWE incurred, the municipality's Mayor must take ownership

of the UIFWE report that implicates the accounting officer. ***Note that this paragraph should not be read and interpreted to mean that allegations of UIFWE incurrence against senior managers should not be processed as contemplated in the Local Government: Disciplinary Regulations for Senior Managers, 2011.***

The UIFWE incident report must analyse root causes arising from system deficiencies, human error, negligence, or deliberate non-compliance, and propose recommended corrective actions. Where supplier misconduct or fraud is suspected, the report should recommend referral to the SAPS in addition to internal disciplinary processes under the Municipal Systems Act for municipal officials.

This report forms the basis for recovery processes including MPAC's investigation and the Municipal Council's eventual resolution on recoverability. It must be clear, objective and supported by all relevant documentation. It is recommended that the report be drafted within 10 working days of entry into the UIFWE register to facilitate swift oversight and remedial action.

Kindly refer to Annexures E to G for examples of UIFWE reports for submission to the MPAC.

4.6. Safeguarding the identified UIFWE documentation and evidence

All source documents, including contracts, invoices, e-mails, minutes of meetings, audit findings, and UIFWE reports, must be collated and stored in a secure repository (electronic and/or physical). Access controls should ensure that only authorised officials can view or modify UIFWE evidentiary materials, preserving the chain of custody for potential disciplinary or criminal proceedings. The municipality's records management policy must define retention periods that exceed the statutory minimums where UIFWE matters are ongoing. Metadata indexing (date, UIFWE case number, responsible official) should be applied to facilitate rapid retrieval for internal audit, MPAC investigation or external audits.

Regular internal audits of the evidence repository will confirm that all required documents have been captured and properly labelled. Any gaps discovered must trigger immediate follow-up with the relevant department, officials and the accounting officer to obtain missing information before the case proceeds to MPAC or the Municipal Council.

4.7. Reporting identified UIFWE to the accounting officer

The respective municipal directorate's senior manager/director must formally submit the UIFWE incident report to the municipality's accounting officer, with the UIFWE register extract in a consolidated memorandum. It is recommended that this submission occur within five working days of completing the UIFWE incident report, ensuring the accounting officer is fully informed and can take any urgent interim steps, such as reporting the UIFWE incurred to the municipality's disciplinary board for investigation of financial misconduct or the institution of disciplinary processes, if the UIFWE incurred stems from other forms of misconduct by an official.

Where the identified UIFWE relates to the municipality's accounting officer, the Mayor of the municipality must perform the same UIFWE report receipting functions as those of the accounting officer, subject to the Local Government: Disciplinary Regulations for

Senior Managers and Financial Misconduct Regulations.

Once liability has been established in terms of section 32(1) of the MFMA, the municipality must initiate the recovery process without delay.

4.8. Reporting identified UIFWE to relevant persons - section 32 of the MFMA

Section 32(4) of the MFMA obliges the accounting officer, upon becoming aware of any UIFWE incurred, to inform the Mayor, the Member of the Executive Council responsible for local government in the province, and the AGSA by writing a report for their attention. This provision requires the accounting officer to promptly inform the Mayor, the Member of the Executive Council responsible for local government in the province, and the AGSA, amongst others, in writing, of:

(a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;

(b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and

(c) the steps that have been taken:

  (i) to recover or rectify such expenditure; and

  (ii) to prevent a recurrence of such expenditure.

This report must describe the nature and amount of the expenditure, indicate whether any person is responsible for or under investigation in respect of that expenditure, and set out the steps taken to recover (based on the liability assessment outlined above in 3.3) or rectify the expenditure and to prevent a recurrence. In circumstances where the UIFWE arises from the accounting officer's actions or inactions, the Mayor must assume these reporting obligations by submitting a report to the MEC and AGSA, with reference to the requirements of section 32(4) of the MFMA. "Where the report relates to unauthorised expenditure and the liability assessment confirms that no deliberate or negligent conduct occurred, the report must be processed through the applicable council procedures for authorisation by the Municipal Council. However, municipalities must be cognisant of the applicable adjustments budget provisions and related timelines.

Section 32(6) of the MFMA further mandates that the accounting officer must promptly refer to the South African Police Service (SAPS) any irregular expenditure that may constitute a criminal offence, as well as any theft or fraud. Should the accounting officer be implicated in the UIFWE or neglect to make the requisite SAPS referral, the Municipal Council must take all reasonable steps to ensure that the Mayor lodges the report with SAPS without delay, by virtue of the power of delegation. This dual-layered mechanism safeguards the integrity of municipal finances and ensures that criminal conduct is reported to law enforcement.

Finally, the Municipal Council retains ongoing oversight of these reporting processes. Through its MPAC, the Municipal Council must regularly review evidence that the accounting officer or the Mayor have met their statutory reporting obligations under section 32. Any failure by either office-bearer to comply may trigger disciplinary action as required by law.

4.9. Reporting of the identified UIFWE to the MPAC

Section 32 of the MFMA requires that municipalities take swift and decisive action when UIFWE is identified. Therefore, the accounting officer or the Mayor should, as good practice, refer UIFWE incident reports directly to MPAC for recovery investigation by no later than the fifth working day of the month following the month in which the UIFWE was identified.

4.10. MPAC UIFWE recovery investigation

Sections 32(2)(a)(ii) and 32(2)(b) of the MFMA require an investigation by the MPAC before the Municipal Council can certify any UIFWE as irrecoverable. It is important to note that such an investigation aims to establish whether the UIFWE must be recovered utilising the factors outlined in regulation 74 of the MBRR and consideration of the requirement of section 32(1) of the MFMA. ***This, therefore, means that the context of the investigations to be undertaken by the MPAC referred to in sections 32(2)(a)(ii) and 32(2)(b) of the MFMA is not that of a forensic investigation.*** .

When UIFWE is incurred, the principal consideration must be recovery. Based on this assessment and supporting evidence provided, MPAC can only recommend a write-off if it cannot rationally recommend that the UIFWE should be recovered. The MPAC's UIFWE recommendation to the Municipal Council should accordingly provide rational reasons why UIFWE should be recovered from a person and should also provide rational reasons why the UIFWE incurred should be written off when the UIFWE is irrecoverable.

In discharging its UIFWE recovery investigation function under regulation 74(1) of the MBRR, the MPAC must, as a minimum, consider all of the following before making any recommendation to the Municipal Council:

a) the measures already taken to recover the UIFWE;

b) the cost incurred in implementing those measures;

c) the estimated cost and likely benefit of any further recovery measures.

The MPAC's UIFWE recovery assessment must contain a written motivation that explains the MPAC's recommendation to the Municipal Council for final decision. For guidance on the minimum content of an MPAC UIFWE report to the Municipal Council, kindly refer to Annexure J: Example of a UIFWE report by MPAC to the Municipal Council for UIFWE recovery consideration.

4.10.1. Recovery of UIFWE considerations

All instances of unauthorised expenditure must be recovered from the liable official or political office-bearer unless the unauthorised expenditure has been certified as irrecoverable by the Municipal Council after an investigation by a MPAC in terms of section 32(2)(a)(ii) of the MFMA or is authorised in an adjustment budget in terms of section 32(2)(a)(i) of the MFMA.

Irregular or fruitless and wasteful expenditure must be recovered from the liable official or political office-bearer unless the expenditure is certified by the Municipal Council, after investigation by the MPAC, as irrecoverable and written off by the Municipal Council in terms of section 32(2)(b) of the MFMA. The National Treasury has issued an MPAC

Guideline and Toolkit, supported by MFMA Circular 92. This can also be used to clarify MPAC's roles and responsibilities, as well as for training purposes. MPAC members considering the recoverability of UIFWE are encouraged to use this Guide as they perform their responsibilities in terms of section 32 of the MFMA.

Irregular expenditure resulting from breaches of the Public Office-Bearers Act is an exception in that the irregular expenditure **must** be recovered from the councillor to whom it was paid, regardless of who was responsible for making, permitting, or authorising the irregular expenditure. Refer to section 167(2) of the MFMA in this regard.

4.10.2. Assessment of deliberate or negligent action or inaction

In considering any instance of UIFWE, MPAC must assess whether the conduct of the person concerned was deliberate or negligent for purposes of section 32(1) of the MFMA. Liability for recovery does not arise automatically because UIFWE occurred. It arises where a political office-bearer or official deliberately or negligently committed, made, or authorised the expenditure. MPAC must therefore determine whether the elements of fault and causation have been established as elaborated in 3.3 above.

MPAC must clearly identify the person or persons from whom recovery should be pursued. Where more than one individual contributed through deliberate or negligent conduct, joint and several liability may apply. Conversely, where the evidence shows that the person acted reasonably and within delegated authority, and that the expenditure resulted from systemic or unavoidable factors, recovery may not be appropriate.

MPAC's recommendation to the Municipal Council must therefore clearly state whether fault has been established, identify the responsible person or persons, and indicate whether recovery should be pursued in terms of section 32(2) or whether the expenditure should be certified as irrecoverable. This structured approach ensures that recovery decisions are lawful, evidence-based, and defensible.

4.10.3. Investigation of unauthorised expenditure

For the MPAC UIFWE recovery investigation recommendation on unauthorised expenditure, the MPAC must consider the following objective factors, in addition to its other considerations, including the considerations of regulation 74(1) of the MBRR:

(i) Has the nature, extent, grounds and value of the unauthorised expenditure been properly articulated in the UIFWE report to the MPAC?

(ii) Has it been established whether the accounting officer, official or public office bearer who made, permitted or authorised the unauthorised expenditure acted deliberately or in a negligent or grossly negligent manner?

(iii) Has the accounting officer informed the Municipal Council, the Mayor or the executive committee that a particular decision would result in an unauthorised expenditure, as per section 32(3) of the MFMA?

(iv) Are there good grounds for why the unauthorised expenditure should be recommended for authorisation in an adjustment budget? For example:

- the Mayor, accounting officer or official was acting in the best interests of the municipality and the local community by making and permitting

unauthorised expenditure;

- the Mayor, accounting officer or official was not negligent or deliberate when making or permitting unauthorised expenditure;
- the unauthorised expenditure incurred does not amount to non-compliance with other sections of the MFMA or other laws governing the municipality; and
- the municipality has not suffered a loss due to the action or inaction of the Mayor, accounting officer or official.

Where the MPAC finds that there are rational and acceptable grounds shown for the unauthorised expenditure incurred, the MPAC can recommend to the Municipal Council that the unauthorised expenditure should be written off due to irrecoverability or recommend that the unauthorised expenditure should be authorised in an adjustment budget if appropriate under the circumstances and subject to the municipality's budget.

4.10.4. Investigation of fruitless and wasteful expenditure

Fruitless and wasteful expenditure can arise in various circumstances, and not just due to non-compliance with any legislation. The MPAC should consider the factual matrix that led to the fruitless and wasteful expenditure. Only in exceptional circumstances can MPAC recommend a write-off of fruitless and wasteful expenditure.

In addition to its other considerations, including the considerations of regulation 74(1) of the MBRR, MPAC must consider the following objective factors in assessing whether the fruitless and wasteful expenditure should be recommended for UIFWE write-off or not:

- Did the responsible person demonstrate that his/her decisions were made without disregard for policy, negligence, dishonesty or deliberate breach of his/her duty to the municipality;
- Did the responsible person act reasonably and with due care;
- Did the responsible person obtain and rely on written guidance from the municipal legal adviser, SCM unit or senior manager on ambiguous or complex legislative or procedural requirements; and
- Where policy was unclear or the transaction was unusually complex, did the responsible person refer the matter up the chain of command rather than proceed without clarity?

It should accordingly be clear that for the MPAC to recommend that fruitless and wasteful expenditure should be written off, the trigger that led to the fruitless and wasteful expenditure being incurred should not be due to any negligent or deliberate action or inaction of a person of interest in a UIFWE recovery investigation.

4.10.5. Consideration of prescription of historical UIFWE balances

Municipalities often carry historical UIFWE balances for extended periods due to failure to detect UIFWE timeously, delays in MPAC investigation, MPAC processes, or council resolutions. Where UIFWE recovery is contemplated in terms of section 32 of the MFMA, municipalities must also consider the impact of the Prescription Act 68 of 1969

(Prescription Act) on the recoverability of historical UIFWE balances. Prescription does not determine whether the expenditure was unlawful. It determines whether the municipality may still lawfully recover the debt from the person liable. If a UIFWE debt has prescribed, recovery from the original debtor is no longer legally enforceable, even though the expenditure remains correctly classified as UIFWE.

In general terms, a debt prescribes after three years in terms of section 11(d) of the Prescription Act, unless interrupted, suspended, or delayed in terms of that Act. Prescription begins to run when the debt becomes due, which occurs when the municipality has knowledge, or is deemed to have knowledge, of the identity of the debtor and the material facts giving rise to the claim. In UIFWE matters, prescription does not begin merely when expenditure is incurred, suspected, recorded in the UIFWE register, or reported for compliance purposes. Prescription begins once the municipality has sufficient factual knowledge to institute recovery proceedings, including the identification of the person responsible and the causal link between that person's conduct and the UIFWE amount.

MPAC processes, council deliberations, or internal governance delays do not suspend or interrupt prescription. Municipalities must therefore actively monitor prescription from the point at which the minimum recoverable facts are known. Further guidance on the application of prescription in UIFWE matters is contained in Annexure H: Guidance on the consideration of possible prescription of old UIFWE balances.

4.10.6. MPAC disciplinary and criminal charges recommendations

Municipalities are reminded to incorporate consequence management processes as part of the considerations when dealing with all incidences of UIFWE. In other words, whenever UIFWE is incurred, and it is referred to the MPAC for investigation in terms of section 32(2) of the MFMA, the MPAC must also assess whether or not the actions or failure to act by any official have been referred to the disciplinary board for investigation. Where this is not done, the MPAC should make a recommendation to the Municipal Council for further action in terms of Chapter 15 of the MFMA, read with the Financial Misconduct Regulations. It is also recommended that consequence management be a standing item at all MPAC meetings, so that there is regular feedback on consequences relating to transactions where recommendations have already been made to the Municipal Council.

If the action of the person(s) liable falls within the ambit of the above description, then the Municipal Council, Mayor or accounting officer (as may be relevant) must institute disciplinary charges as follows:

(i) Financial misconduct in terms of section 171 of the MFMA, read with the Financial Misconduct Regulations: in the case of an official who deliberately or negligently:

- contravened a provision of the MFMA, which resulted in UIFWE; or
- made, permitted or authorised an irregular expenditure (due to non-compliance with any of the legislation mentioned in the definition of irregular expenditure);

(ii) *Breach of the Code of Conduct for Municipal Staff Members*: in the case of an official whose actions in making, permitting or authorising UIFWE

constitute a breach of the Code, but do not amount to financial misconduct or financial offence; and

(iii) *Breach of the Code of Conduct for Councillors*: in the case of a political office-bearer, whose actions in making, permitting or authorising UIFWE constitute a breach of the Code. This would also include instances where a councillor knowingly voted in favour of, or agreed with, a resolution before the Municipal Council that contravened legislation, resulting in UIFWE when implemented, or where a political office-bearer improperly interfered in the management or administration of the municipality.

4.10.7. MPAC's power to request UIFWE information

Regulation 74(2) of the MBRR places a clear duty on the municipality's accounting officer to serve as the information conduit for any UIFWE recovery investigation conducted by MPAC. The MPACs should use regulation 74(2) of the MBRR to ensure that their UIFWE recovery investigations are comprehensive and evidence based. The MPAC should be empowered to request any information it deems necessary to finalise its UIFWE recovery investigation. The accounting officer must furnish all data expressly requested by the MPAC, including any additional material deemed necessary by the MPAC.

In practice, accounting officers must proactively collate and deliver financial records, correspondence, contracts, and any other relevant documentation without delay, which should be included in the UIFWE investigation report submitted to the MPAC for their UIFWE recovery investigation. This obligation ensures that MPAC can conduct a proper, unfettered review of all UIFWE incidents, thereby strengthening the municipality's overall governance and accountability framework. In the event of a lack of cooperation from municipal administrations in supporting the work of MPACs, municipal councils are encouraged to implement consequences management against the relevant official(s).

4.11. Post-MPAC UIFWE recovery investigation report submission to the Speaker

Section 79A(4) of the Municipal Structures Act 117 of 1998 (Municipal Structures Act) mandates that all reports produced by the MPAC be formally submitted to the Speaker, who must then table these reports at the very next sitting of the Municipal Council. The MPAC chairperson is responsible for formally tabling UIFWE recovery investigation reports to the Speaker. In the context of UIFWE oversight, this provision ensures that MPAC's UIFWE recovery investigation findings are brought directly before the Municipal Council without delay. By embedding this requirement within the UIFWE reporting framework, municipalities reinforce the imperative of swift accountability and empower councillors to deliberate and resolve on UIFWE recovery, write-offs, authorisation of unauthorised expenditure, and disciplinary measures, with the full weight of MPAC's evidence-based recommendations.

The Municipal Council UIFWE agenda item should include the MPAC UIFWE recommendation report, the UIFWE reports submitted to the MPAC, with evidence and the UIFWE register extract reflecting the UIFWE under consideration. This consolidated package will enable councillors to make informed decisions in accordance with section 32(2) of the MFMA at the Municipal Council meeting when considering MPAC's UIFWE-related recommendations.

4.12. Municipal Council resolution concerning UIFWE

4.12.1. UIFWE recovery, - write off

Based on the MPAC's UIFWE recommendations report and the accompanying evidentiary documentation, the Municipal Council must adopt a formal resolution on the UIFWE recommendation report, which should be rational. This council resolution should give effect to MPAC's findings and ensure full compliance with section 32 of the MFMA and regulation 74 of the MBRR by explicitly providing for the following council resolutions:

a) Certify that the UIFWE incurred is recoverable and should be recovered from the responsible persons; or

b) Certify that the UIFWE incurred is irrecoverable and should be written off by the Municipal Council; or

Where the MPAC has made other UIFWE-related recommendations, other than what is contemplated in section 32(2) of the MFMA, the Municipal Council should also adopt formal resolutions to effect any of the MPAC's UIFWE-related recommendations. Where the MPAC did not make UIFWE-related recommendations, other than what is contemplated in section 32(2) of the MFMA, nothing prohibits the Municipal Council from adopting a formal resolution on criminal or disciplinary proceedings that should be instituted based on the MPAC UIFWE recommendations report.

Municipal Councils are advised to ensure that the wording of their UIFWE council resolutions is consistent with the wording in section 32(2) of the MFMA. For example, where the Municipal Council resolves to write off the UIFWE, a proposed resolution should read as follows: "The Municipal Council hereby certify the expenditure as recoverable and resolves that it be recovered" or "The Municipal Council hereby certify the expenditure as irrecoverable and resolves that it be written off".

Municipal Councils should note that their ability to resolve irregular expenditure is not dependent on the National Treasury's decision concerning the municipality's application for condonation in terms of section 170. Whatever the Municipal Council formally adopts a resolution on the UIFWE referred to by the MPAC is sufficient for the municipality to adjust its annual financial statements and UIFWE register from an accounting disclosure perspective.

4.12.2. Adjustment budgets to authorise unauthorised expenditure

Section 15 of the MFMA provides that a municipality may incur expenditure only in terms of an approved budget. This is confirmed by section 32(2)(a)(i) of the MFMA, which provides that the Municipal Council may authorise unauthorised expenditure in an adjustments budget.

Sections 28(2)(c) and 28(2)(g) of the MFMA, read together with regulations 23(1), 23(2), 23(4) and 23(6) of the MBRR, discuss when a Municipal Council may authorise unauthorised expenditure in an adjustments budget. This can be addressed in three different adjustments budgets as follows:

a) ***Adjustments budget for unforeseen and unavoidable expenditure:*** An adjustments budget to allow the Municipal Council to provide ex-post authorisation for

unforeseen and unavoidable expenditure that the Mayor authorised in terms of section 29 of the MFMA must be tabled in the Municipal Council at the "first available opportunity" or within the 60 days after the expenditure was incurred (see section 29(3) of the MFMA). Should either of these timeframes be missed, the unforeseen and unavoidable expenditure must be treated in the same manner as any other type of unauthorised expenditure as set out in section 32(2)(a)(ii) of the MFMA.

b) ***Main adjustments budget:*** In terms of regulation 23(6)(a) of the MBRR, the Municipal Council may authorise unauthorised expenditure in the adjustments budget, which may be tabled in the Municipal Council "at any time after the mid-year budget and performance assessment has been tabled in the Municipal Council, but not later than 28 February of the current year". Therefore, the Municipal Council may authorise unauthorised expenditure that occurred in the first half of the current financial year in this adjustments budget. Where unauthorised expenditure from this period is not identified or investigated in time to include in this adjustments budget, it must be held over to the following adjustments budget process noted below.

c) ***Special adjustments budget to authorise unauthorised expenditure:*** In terms of regulation 23(6)(b) of the MBRR, the Municipal Council may authorise unauthorised expenditure in a special adjustments budget tabled in the Municipal Council when the Mayor tables the annual report in terms of section 127(2) of the MFMA. Kindly refer to MFMA Circular No. 63 for clarification in terms of the time period referred to in section 127(2) of the MFMA. This special adjustment budget "may only deal with unauthorised expenditure from the previous financial year which the Municipal Council is being requested to authorise in terms of section 32(2)(a)(i) of the Act." This special adjustment budget, therefore, deals with:

- unauthorised expenditure that occurred in the first half of the previous financial year that was not included in the main adjustments budget or that was included but referred back for further investigation or further information;
- unauthorised expenditure that occurred in the second half of the previous financial year, and
- any unauthorised expenditure identified by the Auditor-General during the annual audit process.

The timing of this special adjustments budget requires:

- the municipality to report all the unauthorised expenditure in its annual financial statements (thus ensuring transparency regarding its performance in implementing the budget);
- the Auditor-General to audit the municipality's disclosure of its unauthorised expenditure and to add any further unauthorised expenditure identified in the audit process; and
- sufficient time (but also places a time limit given the date of tabling the Annual Report) for instances of unauthorised expenditure to be properly investigated before being presented to the Municipal Council for a decision on whether or not to authorise it; the investigation is normally done by the MPAC. If the above timelines are not met, then such matters must be addressed during the following mid-year adjustment budget process.

In all instances where there is a clear overspending on the budget, i.e. the actual

expenditure exceeds the budget, the municipality must pass an adjustment budget to authorise the over-expenditure within the timelines as legislated in regulation 23 of the MBBR. However, in accordance with the definition of unauthorised expenditure in paragraphs (b), (c) and (d), these instances may not necessarily result in over-expenditure (i.e. actual may not exceed budget). In such an instance, an investigation in terms of section 32(2)(a)(ii) of the MFMA will suffice to address the unauthorised expenditure. Therefore, whilst municipalities will investigate and decide to write off the unauthorised budget (where it actually exceeds the budget), an adjustment budget must be passed to authorise the unauthorised expenditure in cases where there was clear over-expenditure in the budget. However, this must be done within the timelines as noted above.

Where a municipality fails to pass an adjustment budget to authorise the unauthorised expenditure, then such expenditure must be dealt with in accordance with section 32(2)(a)(ii) of the MFMA.

4.12.3. Referral of UIFWE for disciplinary measures and criminal referrals

In terms of section 32(5) of the MFMA, the writing-off of any UIFWE as irrecoverable is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of the MFMA relating to such UIFWE. Therefore, even if the Municipal Council resolve to write off UIFWE as irrecoverable or authorises the unauthorised expenditure in an adjustment budget, the act of non-compliance must still be referred to the Disciplinary Board for further investigation in terms of Chapter 15 of the MFMA, read with the Financial Misconduct Regulations.

Where the actions or inactions of officials led to the UIFWE being incurred, does not amount to financial misconduct, financial offence, fraud, theft or corruption, the conduct of the officials should be considered for disciplinary actions as normal misconduct subject to following the SALGBC disciplinary collective agreement for non-senior managers and the Local Government: Disciplinary Regulations for Senior Managers in the case of a senior manager. Where considered appropriate by the Municipal Council, the UIFWE incurred can also be referred to the SAPS for a criminal investigation, based on the evidence, if the matter has not yet been referred to the SAPS.

4.12.4. Recovery of UIFWE post-Municipal Council meeting

If the Municipal Council has adopted a formal council resolution that the UIFWE incurred should be recovered from the responsible person(s), and the UIFWE has not yet been recovered at the date of the Municipal Council meeting, the accounting officer must, in writing, request that the liable official or political office-bearer pay the amount within 30 days or in reasonable instalments. If the person fails to comply with the request, the matter must be handed to the municipality's legal division to recover the debt through the normal debt collection process. The municipality can also institute measures to recover UIFWE monies paid to suppliers of goods and services that were not received.

Municipalities must consider the amendments to the Public Audit Act 25 of 2004 and the regulations issued, which, amongst others, provide for the AGSA to issue a certificate of debt where an accounting officer or accounting authority has failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt.

4.13. Updating of the UIFWE register

Based on the Municipal Council's adoption of UIFWE council resolution, the UIFWE register of the municipality should be updated with the financial effects of the UIFWE council resolution, which are the following:

a) Where the Municipal Council adopted a UIFWE resolution to write off the UIFWE, the UIFWE amount should be deducted from the UIFWE register's balance;

b) Where the Municipal Council adopted a UIFWE resolution to recover the UIFWE, the UIFWE amount should be deducted from the UIFWE register's balance, and a sundry debtor's account should be opened for the UIFWE debtor, including recognising the UIFWE debtor using the mSCOA classification framework; and

c) Where the Municipal Council authorised the unauthorised expenditure, the unauthorised expenditure amount should be deducted from the UIFWE register's balance after the date that the Municipal Council has approved the actual adjustment budget.

Annexure D to this Circular describes the UIFWE's accounting treatment and disclosure requirements.

5. Condonement of irregular expenditure

In terms of section 32(2)(b), irregular expenditure may only be written off by the Municipal Council if, after an investigation by the municipality's MPAC, the irregular expenditure is certified as irrecoverable. In other words, writing off is not a primary response; it is subordinate to recovery processes and may occur only if the Municipal Council certifies the irregular expenditure as irrecoverable. With reference to sub-section (a) of the irregular expenditure definition, in terms of section 170 of the MFMA, only the National Treasury may condone non-compliance with a regulation issued in terms of the MFMA or a condition imposed by the MFMA itself.

Municipal Councils, therefore, have no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of the MFMA's regulations. Section 32(2)(b) of the MFMA provides the Municipal Council only with the power to consider and resolve on the irregular expenditure.

With reference to sub-section (b) of the irregular expenditure definition, there is no provision in the Municipal Systems Act (MSA) that allows for a contravention of the MSA to be condoned. Nevertheless, should a municipality request that non-compliance with any provision of the MSA be condoned, the accounting officer should address the request to the Minister of Cooperative Governance and Traditional Affairs, who is responsible for administering the MSA. However, the resultant irregular expenditure should still be dealt with in terms of section 32(2) of the MFMA.

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

With reference to sub-section (d) of the irregular expenditure definition, a Municipal Council may condone a contravention of the council-approved SCM policy or a by-law giving effect to such policy, provided that the contravention is not also a contravention of the MFMA or the SCM regulations, in which case, then only the National Treasury can condone a contravention of the SCM regulations. Any such requests must be accompanied by a full motivation and submitted to **mfma@treasury.gov.za** for consideration. Municipalities and municipal entities are cautioned that this is an onerous process that should not be taken lightly and is discouraged as a practice.

6. Ratification of minor breaches of the procurement process

In terms of regulation 36(1)(b) of the Municipal Supply Chain Management Regulations, the supply chain management policy of a municipality may allow the accounting officer to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely technical in nature. In the absence of such a policy provision, the accounting officer lacks the power to ratify minor breaches of the procurement process. Crucially, the breach must have been committed by an official or committee acting within an adopted System of Delegations consistent with the MFMA and its regulations. It is important to note that the accounting officer can rely on this provision only if the official or committee that committed the breach had the delegated authority to perform the function under the municipality's adopted System of Delegations, which must be consistent with the MFMA and its regulations. The process of dealing with minor breaches of the SCM policy is contained in a flowchart; refer to Annexure B.

Regulation 36(2) states that the accounting officer must record the reasons for any deviations, report them in the next Municipal Council meeting, and disclose this in a note in the annual financial statements. The emphasis is on recording the "reasons for any deviations and the associated expenditure".

Under regulation 36 of the SCM Regulations, the accounting officer is responsible for determining whether a particular breach of procurement processes is minor or material. In exercising this discretion, the accounting officer must be guided by:

a) the specific nature of the breach: is it simply technical in nature, not impacting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process?

b) the circumstance surrounding the breach: are the circumstances justifiable?

c) the financial implication as a result of the breach: what was the extent of the loss or benefit?

All the factors above must be considered before the accounting officer exercises their discretion. The accounting officer would have to consider the merits of each procurement process breach and decide whether it constitutes a minor or a material breach. Whether the resultant expenditure will be irregular is dependent on when the minor breach was identified. If the minor breach was identified before the tender was awarded, such an instance should be dealt with solely as a non-compliance matter through the ratification of a minor breach process. There will be no irregular expenditure since no expenditure has been incurred up to that point in time, and the accounting officer will be authorised to address the matter conclusively. The relevant documentation supporting this decision

should be maintained for audit purposes.

Should a minor breach be detected after the award was made and expenditure for services rendered had been incurred, there will be non-compliance. The resultant expenditure will be regarded as irregular expenditure. In this instance, the accounting officer may ratify the minor breach, provided that the breach is not, at the same time, a breach of the Municipal Supply Chain Management Regulation or the MFMA itself. The associated expenditure must be processed in terms of section 32(2)(b) of the MFMA. Note that the accounting officer's ratification of the minor breach does not automatically regularise the expenditure, as the legislative authority in this regard vests with the Municipal Council after an investigation by the MPAC.

Note that this category only covers breaches of procurement processes in the municipality's SCM policy and not breaches of other legislation or regulations. It is important to note that, under regulation 36 of the SCM Regulations, only the accounting officer may consider ratifying minor breaches of procurement processes that are purely technical. The accounting officer should implement appropriate processes under the municipality's SCM policy to investigate the nature of the breach, enabling him/her to make an informed decision on corrective action. If a breach falls outside the classification of a minor breach, the accounting officer cannot follow the remedy contained in regulation 36(1)(b). It is recommended that the accounting officer investigate the nature of the breach through the Internal Audit Unit or any other investigative body and implement the recommended corrective action.

The SCM regulation 36(2) specifies a separate process for reporting the ratification of minor breaches to the Municipal Council after the accounting officer has ratified them. The findings of any investigation must be reported to the accounting officer for consideration when deciding in this regard. It is important to maintain documentary evidence for audit purposes.

7. Reconsideration of UIFWE council resolutions

Municipal Councils may, in appropriate circumstances, reconsider, rescind, or amend a prior resolution relating to UIFWE. Any reconsideration must, however, be undertaken strictly in accordance with the municipality's Rules of Order regulating council meetings and decision-making procedures. Where the Rules of Order provide that the Municipal Council may rescind or amend a resolution, such power must be exercised lawfully, rationally, and procedurally fairly. The reconsideration must be properly placed on the agenda, supported by a written motivation, and decided through a formal council resolution.

In reconsidering a UIFWE resolution, a Municipal Council must ensure that the amended resolution or rescinded decision does not unlawfully detract from rights that may have accrued as a result of the original resolution. For example, where recovery proceedings have been instituted or an acknowledgement of debt has been concluded, a Municipal Council must obtain legal advice before altering its position. Similarly, where a person has relied on a prior certification or authorisation, the legal implications of any amendment must be carefully assessed.

If a prior UIFWE resolution is alleged to be irrational, procedurally defective, or unlawful, the appropriate remedy may be judicial review by a competent court. A Municipal Council

should not attempt to cure fundamentally unlawful decisions through repeated internal reconsideration where the defect goes to legality. In such cases, obtaining legal advice and, where necessary, allowing the matter to be reviewed by a court may be the proper course.

The reconsideration of UIFWE resolutions must therefore balance two principles. On the one hand, a Municipal Council retains the authority to correct its own decisions in accordance with its Rules of Order. On the other hand, such authority must be exercised within the bounds of legality, rationality, and procedural fairness, and may not undermine accrued rights or substitute for lawful judicial review where required.

8. Municipal entities' processing of Irregular, Fruitless and Wasteful Expenditure

8.1. Irregular or fruitless and wasteful expenditure incurred by municipal entities

Section 102 of the MFMA, read together with regulation 75 of the MBRR, provides the framework for a municipal entity to deal with irregular or fruitless and wasteful expenditure. Regulation 75(1) of the MBRR grants the board of directors the power to investigate instances of irregular or fruitless and wasteful expenditure in the municipal entity, and upon the conclusion of such an investigation, it must decide whether or not the expenditure is irrecoverable. Therefore, the board of directors will make the final decision on the recoverability of irregular expenditure and report it to the Municipal Council of the parent municipality for noting purposes.

Further to the above, in terms of regulation 75(2)(a) of the MBRR, the board of directors may certify irregular expenditure as irrecoverable if it finds that it is indeed irrecoverable. After the board of directors has certified the irregular expenditure as irrecoverable, it must submit the certification of recoverability to the Mayor of the parent municipality in terms of regulation 75(2)(a) of the MBRR. The submission to the Mayor is for information purposes and not for the parent municipality to deal with the matter, as the power to decide on the recoverability of a municipal entity's irregular expenditure vests with the board of directors of the relevant municipal entity. The board of directors, therefore, has the same powers as the Municipal Council (as outlined in section 32(2)(b) of the MFMA) when it comes to deciding whether to write off or recover irregular expenditure.

Although this Circular is primarily directed at municipalities and the processing of UIFWE within municipal administrations, municipal entities should apply the guidance, where appropriate, to their own irregular and fruitless and wasteful expenditure processes. Municipal entities are subject to the MFMA accountability framework and must ensure that investigation, recovery, and consequence management practices align with the principles set out in the Circular. The guidance should therefore be applied, with the necessary contextual adjustments, to strengthen compliance within municipal entities.

Refer to Annexure D to this Circular for further guidance on disclosing the irregular expenditure for municipal entities.

8.2. Unauthorised expenditure and municipal entities

The definition of unauthorised expenditure in section 1 of the MFMA specifically

references a municipality and does not incorporate a municipal entity in the definition. It, therefore, follows that a municipal entity cannot incur unauthorised expenditure for purposes of the MFMA. In terms of section 87(8) of the MFMA, a municipal entity may incur expenditure only in accordance with its approved budget or adjustment budget. Therefore, where a municipal entity overspends its budget, such expenditure must be classified as irregular expenditure by the municipal entity, as it incurred expenditure in contravention of a provision of the MFMA.

Refer to Annexure D to this Circular for guidance on the disclosure of the irregular or fruitless and wasteful expenditure for municipal entities.

9. Disclosure of UIFWE in the annual financial statements

For accounting-related disclosure guidance, refer to Annexure D, attached to this Circular. It is important to note that municipalities and municipal entities prepare their annual financial statements on the accrual basis of accounting. In relation to UIFWE, transactions, other events, and conditions are recognised when they occur (and not only when cash or its equivalent is received or paid). When the accrual basis of accounting is used, items are recognised as assets, liabilities, net assets, revenue and expenses (the elements of financial statements) when they satisfy the definitions and recognition criteria for those elements in the Framework for the Preparation and Presentation of Financial Statements.

In terms of section 125(2)(d) of the MFMA, the notes to the annual financial statements of a municipality and municipal entity must include, amongst others, particulars of any material losses and any material irregular, fruitless and wasteful expenditure, including in the case of a municipality, any material unauthorised expenditure that occurred during the financial year, and whether these are recoverable. The sub-section also requires disclosure of any criminal or disciplinary steps taken as a result of such losses or such UIFWE, as well as any material losses recovered or written off.

The disclosure of UIFWE in the annual financial statements must be supported by a cumulative UIFWE register, with its closing balance at the end of the financial year agreeing with the UIFWE balances disclosed in the annual financial statements. The cumulative UIFWE register should also be designed to assist with the disclosure of in-year UIFWE amounts as required in terms of section 125(2)(d) of the MFMA.

Regarding the accounting disclosure of unauthorised expenditure in the municipality's annual financial statements under section 125 of the MFMA, we are aware that not all unauthorised expenditure for a specific period relates to cash transactions. This, therefore, results in a distorted picture when reporting on this particular item, as readers of the annual financial statements often see unauthorised expenditure on non-cash items as money lost by the municipality. For this reason, we advise municipalities to distinguish between unauthorised expenditure relating to cash and non-cash items in their annual financial statements. This will provide readers with a clear picture of expenditure that was not in line with the council-approved annual budget (cash items) and of instances where incorrect estimates were made, resulting in unauthorised expenditure (non-cash items).

9.1. Processing of UIFWE where there are missing documents

In instances where the MPAC encounters the processing of historical UIFWE balances

of more than five years back lacking documentary evidence, the current staff members tasked with UIFWE record-keeping, including the relevant Information and Communication Technology official, must submit sworn affidavits confirming the diligent steps they have undertaken, both manually and electronically, to locate the alleged missing UIFWE document. These affidavits should detail the search parameters, systems accessed, date ranges reviewed, and any outcomes, thereby creating an auditable trail of efforts to recover the original source documentation.

The municipal administration must furnish MPAC with all available evidence that can rationally underpin its UIFWE recommendations to the Municipal Council. This includes scanned copies of retrieved physical documents and extracts from electronic repositories, such as network drives, document management systems, and e-mail archives. Where alternative information has been identified (for example, digital correspondence confirming authorisation or payment vouchers stored in legacy financial systems), such evidence must be formally presented to MPAC with clear references to its origin and context as part of the UIFWE reports to the MPAC as part of processing historical UIFWE balances.

Moreover, the municipality should actively engage both current and former officials who may have held custody of UIFWE documentation relevant to historical UIFWE balances. Contact attempts via e-mail or formal letter requests must be documented and attached as supporting exhibits for submission to the MPAC. By demonstrating a comprehensive, evidence-based search strategy and providing MPAC with a full account of these efforts, the municipal administration ensures that UIFWE recovery investigations rest on the firmest possible factual foundation, even without the original physical UIFWE documentation.

Kindly refer to Annexure C for considerations relevant to the processing of UIFWE where there are allegations of missing documents.

9.2. The disclosure of irregular expenditure VAT inclusive

Municipalities and municipal entities must record all irregular expenditure at their full transaction value, including Value-Added Tax (VAT), in the UIFWE register and the annual financial statements (AFS). This approach aligns with the MFMA, which defines irregular expenditure with reference to “the full value of the transaction involved” rather than only the non-VAT component. Consequently, any future recovery or write-off of such irregular expenditure, once the municipality has complied with section 32 of the MFMA and other applicable processes, must likewise encompass the total amount, VAT included; ordinary VAT rules will continue to apply at that stage.

Accounting for irregular expenditure gross of VAT does not contravene the Standards of Generally Recognised Accounting Practice (Standards of GRAP), the broader reporting framework, or the Value-Added Tax Act 89 of 1991. The underlying transaction (for example, the acquisition of an asset) remains recognised and measured in accordance with the relevant Standard of GRAP, while the irregular expenditure disclosure quantifies the legislative transgression for accountability purposes. Because this disclosure is a statutory requirement rather than an “underlying accounting transaction,” its inclusion in the AFS does not compromise fair presentation. Instead, it enhances transparency and strengthens the accountability framework envisaged by the MFMA.

9.3. Failure to process UIFWE incurred

Failure by the MPAC or Municipal Council to process identified UIFWE within the reasonable timeframes not only undermines the municipality's fiduciary duties under section 32 of the MFMA but also constitutes a breach of the Code of Conduct for Councillors as contemplated in Schedule 7 to the Municipal Structures Act. In terms of the Code of Conduct for Councillors and the regulations of the Code of Conduct, councillors are required to act in the best interests of the municipality, perform their functions without favour or prejudice, and observe the highest ethical standards. Where the MPAC or Municipal Council knowingly delay or neglects the processing of UIFWE investigations and resolutions, councillors involved may be guilty of gross misconduct or dereliction of duty in terms of the Code's provisions. In cases where UIFWE processing is wilfully obstructed, for example, by refusing to table MPAC reports or by failing to adopt UIFWE council resolutions, this obstruction can be framed as a violation of the councillor's duty to enhance transparency and effective governance, warranting an investigation of the breach of the code of conduct by the implicated councillors.

Section 37 of the Municipal Structures Act vests the municipal Speaker with key oversight and enforcement responsibilities over councillor conduct. The Speaker must act on any complaints of Code of Conduct for Councillors contraventions by initiating an investigation into an alleged breach of the Code of Conduct for Councillors. Moreover, the Speaker is the custodian of the Municipal Council's integrity. By fulfilling these duties, the Speaker helps close the accountability loop and safeguards the municipality against protracted UIFWE exposure.

Where UIFWE is not processed due to the municipality's accounting officer's failure to ensure the compilation of UIFWE reports for submission to the MPAC, and the Municipality's Mayor has requested the accounting officer to ensure that UIFWE reports are compiled, the failure of the accounting officer to do so constitutes misconduct which should lead to disciplinary actions against the accounting officer.

If the municipality's accounting officer, without a valid reason, fails to compile and submit UIFWE reports to the MPAC after a direct instruction from the Mayor, this omission may constitute misconduct and warrant disciplinary actions to be taken against the accounting officer. If the accounting officer duly instructed an official to compile UIFWE reports for MPAC and the official failed to provide them without a valid reason, such omission may constitute misconduct and warrant disciplinary action by the accounting officer against the official. The municipality's accounting officer may also request the municipality's internal audit unit to draft UIFWE reports when municipal staff fail to compile them.

9.4. MPAC terms of reference concerning the processing of UIFWE

To ensure that the municipality's MPAC operate efficiently, it is advised that the MPAC's terms of reference include their specific roles in UIFWE processing, which include giving the MPAC the necessary delegations of power to, amongst others:

- Be empowered to receive UIFWE reports to accept UIFWE reports from the accounting officer or the Mayor, or where the accounting officer or Mayor is not able to submit the UIFWE report to the MPAC, that any other senior manager/director of the municipality is empowered to submit UIFWE reports to the MPAC.; and

- Be empowered to refer matters to the disciplinary board for financial misconduct investigations, to refer officials' misconduct for disciplinary action recommendations, and to recommend qualifying misconduct for criminal investigations in appropriate circumstances.

10. Conclusion

Please ensure that the contents of this Circular are brought to the attention of the relevant officials, the MPAC and Municipal Council within municipalities and municipal entities.

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01 April 2026

Annexure A:	Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditure
Annexure B:	Process Flow to address Minor Breaches of the SCM Policy
Annexure C:	Missing Documents
Annexure D:	Disclosure and Accounting Treatment for Unauthorised, Irregular, Fruitless and Wasteful Expenditure
Annexure E:	Example of an Irregular Expenditure Report
Annexure F:	Example of an Unauthorised Expenditure Report
Annexure G:	Example of a Fruitless and Wasteful Expenditure Report
Annexure H:	Guidance on the Consideration of Possible Prescription of Old UIFWE Balances
Annexure I:	Example of a UIFWE Policy for a Municipality
Annexure J:	Example of a UIFWE Report by MPAC to the Municipal Council for UIFWE Recovery Consideration