

PRESENTATION TO THE STANDING COMMITTEE ON THE AUDITOR GENERAL

National Treasury: Office of the Accountant-General

Date: 13 March 2018



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

BACKGROUND

The National Treasury would like to thank the Committee for the opportunity to present our comments and proposals today.

We would like to discuss the following:

1. Investigating Undesirable Audit Outcomes
2. Constitutional Mandate of the Auditor General of South Africa (AGSA)
3. Recovery of Losses
4. 1% Audit Fees
5. Financial Impact of Bill
6. Proposals

Public Audit Amendment Bill, 2017

COMMENT 1 – INVESTIGATING UNDESIRABLE AUDIT OUTCOMES:

Clause 3(b) inserting subsection (1B) in section 5 of the Act:

- The proposed power for the AGSA to refer undesirable audit outcomes for investigation, especially if conducted by the AG pose a risk to the AG's independence. International auditing standards are clear that the provision of assurance and non-assurance services by a firm to one client can impede independence and further sets out evaluations that should be performed and safeguards that must be in place to reduce the risk to an acceptable level.
- National Treasury still feels that if this clause is enforced, there will be a duplication of the roles of accounting officers and accounting authorities as set out in the Public Finance Management Act, 1999 (PFMA) and the Municipal Financial Management Act, 2003 (MFMA).

Public Audit Amendment Bill, 2017

COMMENT 1 – continues:

- The AGSA audit procedures are based on a sample basis. Often, once an irregularity is discovered, the whole population is classified as irregular expenditure. It is unclear how recovery will take place in these circumstances.
- National Treasury remains unclear on how a duplication of investigations by the affected entity itself or external bodies such as the Special Investigation Unit (SIU) or Public Protector will be avoided.
- A duplication of investigation will have severe cost implications to the state.

Public Audit Amendment Bill, 2017

COMMENT 2 – CONSTITUTIONAL MANDATE OF AGSA

The Constitution in Section 188 stipulates that the AGSA must audit and report on the accounts, financial statements and financial management of institutions in all spheres of government. The additional functions with respect to investigations and mandatory recovery of losses stipulated in the Amendment Bill may intentionally or unintentionally result in resources being focussed on these areas rather than the constitutional mandate of the AGSA.

National Treasury is particularly concerned about the function of debt recovery in light of the huge legal and personnel impact it will have on the AGSA's organisation.

Public Audit Amendment Bill, 2017

COMMENT 3 – RECOVERY OF LOSSES BY AGSA:

The proposed section 5(1B) obliges the AGSA to recover from an Accounting Officer or Accounting Authority any losses resulting from unauthorised, irregular or fruitless and wasteful expenditure suffered by the relevant auditee, if no satisfactory explanation for non-recovery is furnished.

It must be noted that not all irregular and unauthorised expenditure results in a loss.

Possible duplication of roles of functionaries under the PFMA and MFMA and also those of the Asset Forfeiture Unit and the SIU.

Unauthorised expenditure is regulated in section 34 of the PFMA and section 32 of the MFMA. The proposed amendment of the Public Audit Act is not in line with these provisions.

Public Audit Amendment Bill, 2017

COMMENT 3 – continues:

Recovery of debt by AG and payment into the relevant Revenue fund might be construed as the AG being accountable to the Revenue Fund for completeness of revenue and might impede on the AGSA's constitutional independence
The AGSA's role in the recovery of debt may also result in the undermining of the primary function of being an independent auditor.

The recovery of debt will certainly lead to extensive legal costs and use of legal experts – it is unclear how these costs will be funded. There might also be a duplication of costs as other government agencies are also performing this function.

The recovery as proposed in section 5(1B)(f)(ii) from the remuneration of an employee will, in the absence of agreement require a garnishee order.

Public Audit Amendment Bill, 2017

COMMENT 4 – 1% AUDIT FEES SECTION 23(6):

The National Treasury remains committed to engage with the AGSA on any debt collection strategies, but thought it appropriate that changes must be included in the Public Audit Act that will improve the process that our offices have been following in the past to deal with this section of the PAA.

We would as a minimum like to reduce the administrative burden on both offices in this regard. It is further critical that NT and AGSA engage on the timing and budget for any audit fees that NT is liable for, so that we are not open to litigation and contingent liabilities that are not transparent to our stakeholders.

Section 23 (1) of the Public Audit Act already determines that the AGSA must consult the oversight mechanism AND the National Treasury on determining the basis for the calculation of audit fees. This consultation with NT is critical to ensure audit fee affordability.

Public Audit Amendment Bill, 2017

COMMENT 5 – FINANCIAL IMPLICATIONS OF THE BILL:

The Memorandum on the Objects for the draft Bill sets out the estimated cost per annum for the implementation of the additional functions of the AGSA as R 33 956 979.

It is proposed that the AG should do a detailed cost analysis and a funding proposal for the changes to the Public Audit Act.

If voted funds are required, the AGSA's office should submit a formal request through the annual Medium Term Expenditure Framework (MTEF) process.

Public Audit Amendment Bill, 2017

PROPOSALS:

The National Treasury shares the SCOAG and AGSA's concerns around the current legislative measures that deals with "unlawful" types of expenditures that results in the loss of public resources.

After further technical discussions between officials of the AGSA and NT, we would like to make the following proposals regarding the Bill:

1. Referral of investigations should be limited to organs of state and not include private bodies;
2. The AGSA should only step in enforcing recovery of losses if existing provisions in the PFMA and MFMA as well as institutional policies on recovery of losses are not followed by Accounting Officers / Accounting Authorities;
3. If the AGSA issues a certificate of recovery, the recovery must be done by the relevant institutions in terms of applicable legislation and institutional policies;

Public Audit Amendment Bill, 2017

PROPOSALS:

4. Active participation by all relevant state organs, including the AGSA, in the Anti-Corruption Task Team of the Presidency is critical to coordinate and to avoid duplication;
5. The strengthening of the framework where the accounting officer or accounting authority as such is responsible for the failure to recover money through additional measures in subordinate legislation such as regulations under the PFMA and MFMA;
6. NT supports the additional powers of the AGSA to prescribe criteria on how to exercise his discretion when performing discretionary audits and to opt out of certain mandatory audits – we believe that can reduce audit costs if managed appropriately;

Public Audit Amendment Bill, 2017

PROPOSALS:

7. Amendment of section 23(6) – NT agrees that as per the Constitution, it is critical that the AGSA remains independent. We should put further regulations in place to ensure that the NT portion is affordable, especially given the current economic climate. Currently a process is underway to move the budgets for Constitutional Institutions to the Vote of Parliament, which can also be considered in this regard.

THANK YOU

