

# **CEDERBERG MUNICIPALITY**



## **CONSEQUENCE MANAGEMENT FRAMEWORK AND STANDARD OPERATING PROCEDURE**

**Issued in terms of sections 32, 62, 111, 112, 171 and 173 of the MFMA, SCM TR 38  
and PPPFR 14 and takes effect on  
1 January 2020**

**Municipal Instruction: ...../2020**

**TO THE:       THE EXECUTIVE MAYOR  
                  COUNCILLORS  
                  SENIOR MANAGERS  
                  ALL MUNICIPAL STAFF**

**CONSEQUENCE   MANAGEMENT   FRAMEWORK   AND   STANDARD   OPERATING  
PROCEDURE**

1. Section 62(1)(d) read with section 32 of the Municipal Finance Management Act, 2003 (Act 56 of 2003) [MFMA] prescribe that the Accounting Officer must take all reasonable steps to prevent unauthorised, irregular, fruitless, and wasteful expenditure.
2. Additionally, sections 111 and 112 of the MFMA prescribe that the Accounting Officer must ensure that the municipality has and implements an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost effective.
3. The prescripts are further augmented by the:
  - a. Supply Chain Management Treasury Regulations, 2005 [SCM TR] which stipulates that the municipality must develop and implement an effective and efficient SCM Policy. SCM TR 38 further provides that such policy must provide for measures to combat the abuse of the SCM system.
  - b. Preferential Procurement Framework Act, 2000 (Act 5 of 2000) [PPPFA] and its Regulations of 2017 [PPPFA-R], which prescribe a procedure to be followed when fraud or false information is detected, when claiming preferences.
  - c. The Financial Misconduct Regulations [FMR] issued under MFMA on 30 May 2014, which prescribe the requirements in relation to financial misconduct and financial offences.
4. In compliance with these provisions, this framework and standard operating procedure [FSOP] was developed to manage and treat events of SCM system abuse, inclusive of restricting of suppliers as well as the management and treatment of resultant irregular expenditure.
5. This Instruction therefore:
  - a. Sets out the FSOP for consequence management related to financial management.
  - b. Is effective from 1 January 2020.

c. Is issued in terms of sections terms of sections 32, 62, 111, 112, 171 and 173 of the MFMA, SCM TR 38 and PPPFR 14.

6. Your co-operation to ensure further distribution and implementation will be appreciated.

**ACCOUNTING OFFICER**

**DATE:**

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## **PART 1: ABBREVIATIONS, DEFINITIONS AND DESCRIPTIONS**

1.1. In this FSOP the following abbreviations, definitions and description have the meaning as described below:

AC	-	Audit Committee
AFS	-	Annual Financial Statement
AGSA	-	Auditor General of South Africa
AO	-	Accounting Officer
AR	-	Annual Report
CFO	-	Chief Financial Officer
FWe	-	Fruitless and Wasteful Expenditure
FI	-	Forensic Investigators
FMR	-	Financial Management Regulations
HRM	-	Human Resource Management
IA	-	Internal Audit
Ie	-	Irregular Expenditure
MSA	-	Municipal Systems Act, 2000 (Act 32 of 2000)
UIFW	-	Unauthorised, Irregular, Fruitless & Wasteful expenditure
NT	-	National Treasury
MFMA	-	Municipal Finance Management Act, 2003 (Act 56 of 2003)
MPAC	-	Municipal Public Accounts Committee
PT	-	Provincial Treasury
s	-	Section of legislation
SAPS	-	South African Police Services
SCM	-	Supply Chain Management
SCM TR -		National Treasury Regulations in relation to SCM, 2005

1.2. 'Abuse of power' means the use by an official of his or her vested authority to improperly benefit another official, person or entity or using such power to improperly discriminate against another official, person or entity.

1.3. 'Abuse of privileged information' involves the use, by an official of privileged information and knowledge that will provide an unfair advantage to another person or entity to obtain a benefit.

1.4. 'Accounting Officer' means the Municipal Manager of Cederberg Municipality, appointed in terms of section 54A, read with section 55(2) of the MSA, who, by virtue of section 60 of

the MFMA, is responsible for exercising the powers and functions assigned to him/her under the MMFA, including the responsibility of combating any abuse of the SCM System, and his/her nominee.

- 1.5. 'Bid' includes, inter alia, a quotation (whether verbal or written), a tender, an expression of interest, a proposal, and any other proposition to do business with the Cederberg Municipality, whether solicited or not and whether pursuant to a competitive procurement process or not, and includes a written offer in the prescribed form in response to an invitation to bid by the Municipality for the provision of goods and/or services, and the verb "to bid"(or "to tender") and the noun "bidder" (or "tenderer") have corresponding meanings.
- 1.6. 'Bribery' means a promise, offering or giving of a benefit that improperly affects the actions or decisions of officials.
- 1.7. 'Business risk' means the threat that an event or action will adversely affect a Municipality's ability to maximise stakeholder value or citizen perception of service delivery.
- 1.8. 'Compliance' means the meeting of obligations under laws, regulations, codes, or standards.
- 1.9. 'Conflict of interest' means the failure by an official to act or to consciously fail to act on a matter where the official has an interest or another person or entity that has some form of relationship with the official has an interest.
- 1.10. 'Constitution' means the Constitution of the Republic of South Africa, 1996.
- 1.11. 'Contract' means a lawful and binding written agreement between a successful tendered and the Cederberg Municipality which contract is awarded pursuant to a procurement process, whether competitive or not, and which creates rights and obligations between the parties inter se.
- 1.12. 'Control' means any action, procedure or operation undertaken to increase the likelihood that activities and procedures achieve their objectives. Control is a response to risk and is intended to contain uncertainty of outcome.
- 1.13. 'Corruption' means giving or offering, receiving or agreeing to receive, obtaining or attempting to obtain any benefit which is not legally due to or by a person who has been charged with a duty or power by virtue of any employment, to do any act or omit to do any act in relation to that power or duty.
- 1.14. "Eligibility documents' shall mean:
  - (i) Tax clearance and municipal fee declarations and certificates certifying that the bidder has no undisputed commitments for municipal fees due to any municipality or overdue for a period of 30 days or more.

- (ii) Declarations by tenderers certifying the correctness of information and certifying validity of authority to act (Regulation 14 of the PPPFA).
- (iii) Certificates declaring details of private or business interests in terms of Regulation 46(e) of the SCM TR's.
- (iv) CIDB certificates, (Construction Industry and Development Board accreditation certificates).
- (v) Proof of registration of a company, close corporation, co-operative or any other document requiring formal registration.
- (vi) Any partnership agreement, or agreement of joint venture, memorandum of articles of a company, association agreement or any other agreement establishing a business entity.
- (vii) Statement setting out details of work undertaken in the government/public sector/organs of state in the past five (5) years, including particulars of persons who assessed the work and who can be contacted to verify completion/ non-completion of the contract.
- (viii) Audited financial statements where applicable, or books of account.
- (ix) Or any other document prescribed by law or specifically requested by the Cederberg Municipality.

1.15. 'Embezzlement' involves theft of resources by persons who control such resources.

1.16. 'Extortion' means the abuse of authority to obtain undue money.

1.17. 'Favouritism' means the provision of services or resources according to personal affiliation of an official.

1.18. 'Fraud prevention' involves the design, implementation and monitoring of effective accounting and operational controls. The functioning of these controls depends on the control environment, which is the tone set by management. If management is risk averse and support the application of controls, then accounting and operational controls are likely to be effective. Conversely, if management do not support the application of controls, accounting and operational controls are likely to be ineffective.

1.19. 'Fraud' means introducing a course of action by deceit or other dishonest conduct, involving acts or omissions of the making of false statements, orally or in writing, with the object of obtaining money or other benefit from, or of evading a liability to, the municipality. This definition includes monetary gain and any benefit that could be gained, including intangibles, such as information. Fraud causes actual or holds potential financial loss to any person or entity immediately before or after the activity.

- 1.20. 'Cederberg Municipality Register of Tender Defaulters' means the list of restricted suppliers compiled by the Municipality for purposes of inter alia, combating abuse of the Supply Chain Management System in terms of which the affected persons reflected on the list are, after application of the *audi alteram partem* principle, prohibited from obtaining any business from the Municipality and/or any other organ of state, for a period up to a maximum of 10 years.
- 1.21. 'Maladministration' means an administrative action that is unlawful, arbitrary, unjust, oppressive and improperly discriminatory or taken for an improper purpose and which substantially and adversely affects someone's interest.
- 1.22. 'MFMA' means the Local Government Municipal Finance Management Act, 2003 (Act 56 of 2003) - MFMA.
- 1.23. 'Nepotism' means the events where an official ensures that a family member is appointed to municipal service positions or that family members receive contracts from the municipality.
- 1.24. 'Official' means any municipal employee or official appointed in terms of the Municipal Systems Act.
- 1.25. 'PAIA' means the Promotion of Access to Information Act, 2000 (Act 2 of 2000).
- 1.26. 'PPPFA' means the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000).
- 1.27. 'Representative' means any person, whether authorised or not, who represents or purports to represent an affected person in relation to a bid, including, inter alia, any directors, members, employees, agents and legal representatives of an affected person.
- 1.28. 'Restriction or Restricting' has the meaning contemplated under regulation 13(2)(d) of the PPPFA Regulations, namely, the restriction of a tenderer or contractor, its shareholders and directors or solely its shareholders and directors, who acted on a fraudulent basis, from obtaining business from an organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied.
- 1.29. 'Risk' means the threat that an event or action will adversely affect the Municipality's ability to achieve its objectives and to execute its strategies successfully.
- 1.30. 'SCM Policy' means the Cederberg Municipality's Supply Chain Management Policy, as amended, adopted by its Municipal Council, in terms of section 111 of the MFMA.
- 1.31. 'SCM Regulation or SCM TR' means the Municipal Supply Chain Management Regulations, 2005, published in Government Notice 868 of 30 May 2005 in Government Gazette 27635.



- 1.32. 'Supplier/service provider' means any natural or juristic person found to be in breach of this Policy by virtue of an act of abuse of the Supply Chain Management System and, where applicable includes any representative of such person.
- 1.33. 'Theft' means the unlawful and intentional misappropriation of another's property or property, which is in his/her lawful possession, with the intention to deprive the owner of its rights permanently.

## **PART 2: CONTEXT**

- 2.1. Municipalities are often faced by UIFW.
- 2.2. Additionally, SCM system abuse represents a significant potential risk to the Municipality's assets, service delivery efficiency and reputation. This Municipality will not tolerate SCM system abuse which may result in irregular expenditure or corrupt or fraudulent activities, whether internal or external, and will vigorously pursue and prosecute any parties, by all legal means available, which engage in such practices or attempt to do so.
- 2.3. In respect of the management of UIFW and SCM abuse the Auditor-General of South Africa [AGSA] has highlighted issues of non-compliance, weak controls, procedural and policy gaps as well as lack of consequence management and for that purpose augmented its audit scope to address such weaknesses if not adequately addressed by the relevant Municipality.
- 2.4. The Municipality is therefore committed to establishing a standard operating procedure to detect, register, investigate, treat and monitor UIFW events, inclusive of SCM system abuse events as well as an appropriate system of consequence management.

## **PART 3: OBJECTIVES**

- 3.1. In response to the regulatory and operational environment, this FSOP aims to:
- (i) Provide clarity of the relevant legal framework in relation to consequence management.
  - (ii) Assist in the prompt finalisation of reported UIFW and SCM abuse cases.
  - (iii) Enable the correct identification of UIFW and SCM abuse as well as the appropriate consequence management.
  - (iv) Provide an appropriate consequence management investigation process that will ensure consistency.
  - (v) Provide an appropriate consequence management recording process that will ensure consistency.
  - (vi) Provide further guidelines and procedures (the 'HOW').

- (vii) Make officials/employees aware of the treatment and/or management of UIFW, SCM abuse and consequence management.
- (viii) Instil best practice.
- (ix) Prevent UIFW expenditure.
- (x) Strengthen the control environment.
- (xi) Establish a point of access for the reporting, investigation, determination, and treatment of UIFW, SCM abuse and consequence management.
- (xii) Prevent the undermining of the financial management system.
- (xiii) Assist management to appropriately act on UIFW, SCM abuse and consequence management incidents.
- (xiv) To strengthen the ability to manage consequence management.
- (xv) To create a central capacity to manage consequence management.

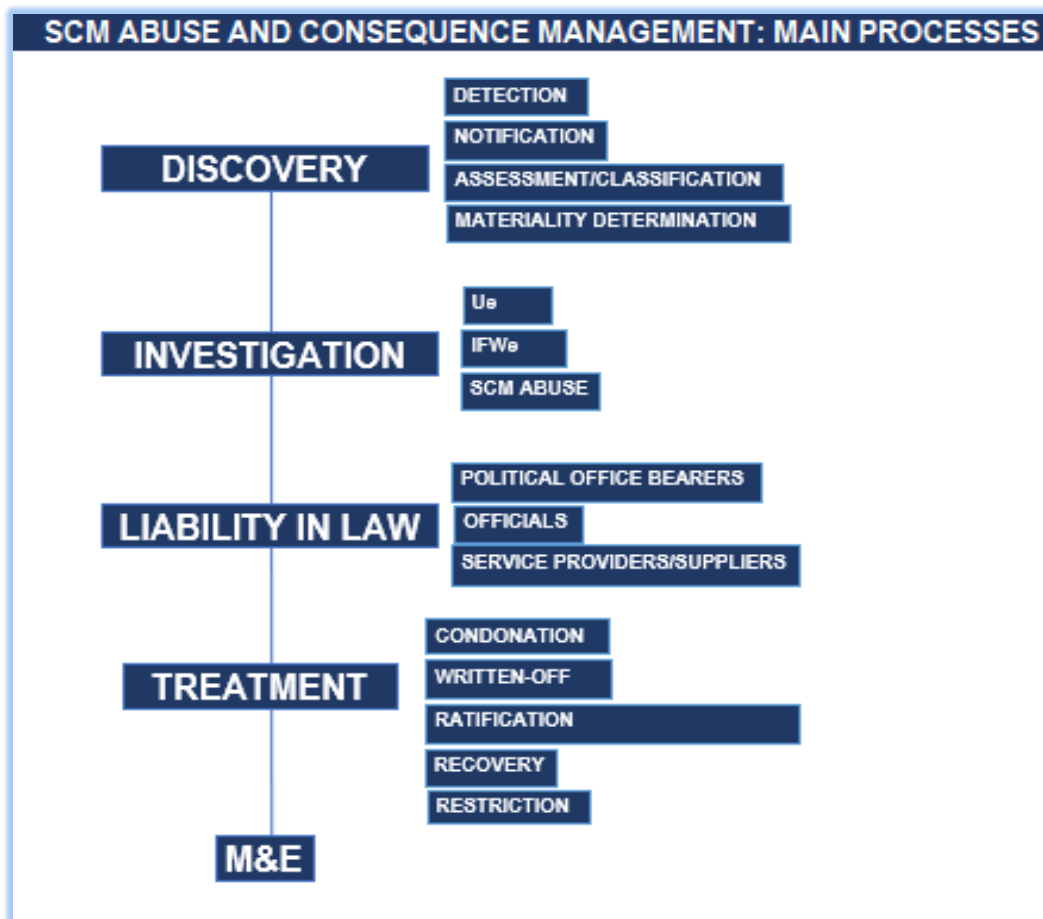
#### **PART 4: APPROACH**

- 4.1. For ease of reference this FSOP is divided into Parts as set out in the Content table.
- 4.2. It is imperative to note that this FSOP aims to summarise the important aspects to be considered when managing UIFW and consequence management and does not in any way replace other official prescripts issued in this regard nor exempt officials from full compliance with such prescripts.
- 4.3. For ease of reference this FSOP will deal with the following elements:
  - (i) Regulatory governance framework.
  - (ii) Roles and responsibilities of stakeholders.
  - (iii) For a holistic management approach to consequence management the following main processes will be considered:
    - a. Discovery of UIFW, Fraud and SCM Abuse, by addressing:
      - i. Detection.
      - ii. Notification.
      - iii. Classification.
      - iv. Materiality determination.
    - b. Investigation of UIFW, Fraud and SCM Abuse.
    - c. Liability in law determination, by addressing:
      - i. Political office bearers.
      - ii. Municipal officials.
      - iii. Service providers/suppliers.
    - d. Treatment, by addressing:

- i. Condonation.
- ii. Writing-off as irrecoverable.
- iii. Ratification of minor technical errors.
- iv. Recovery.
- v. Restriction of service providers/suppliers.
- e. Monitoring and Evaluation.

4.4. Graphically depicted, the consequence management main processes are as per figure 1:

*Figure 1: Consequence Management main processes:*



## PART 5: APPLICATION

5.1. This FSOP is applicable to all municipal officials appointed in terms of the Municipal Systems Act, and service providers where implicated.

## **PART 6: MAINTENANCE**

- 6.1. Given the changing nature of the regulatory, control and operational environment as well as the behaviour of officials, this document will be updated by means of supplementary Instructions on an on-going basis.
- 6.2. As deduced from the content of this FSOP, the **Office of the CFO** plays a pivotal role in the investigation and treatment of consequence management. Maintenance will thus be performed by the **Office of the CFO**.
- 6.3. For clarification of any matter contained in this Instruction, please address queries to the Office of the CFO.

## **PART 7: IMPLEMENTATION**

- 7.1. This FSOP is effective from **..... /2020**.
- 7.2. UIFW and consequence management investigations, excluding human resource management mandates, are vested with **Office of the CFO**.
- 7.3. It is the responsibility of management to bring the content of this FSOP to the attention of all parties concerned.
- 7.4. Non-compliance with this FSOP will result in appropriate disciplinary procedures being considered and instituted against the relevant municipal servants where deemed necessary.
- 7.6. Information sharing on this FSOP and access to the relevant templates must be ensured via:
  - 7.6.1. Availability on the Municipal Website.
  - 7.6.2. Municipal circular.
  - 7.6.3. Discussion with Top Management.
  - 7.6.4. Inclusive in new employees' induction process.

## **PART 8: REGULATORY GOVERNANCE FRAMEWORK**

- 8.1. From a governmental perspective the MFMA represents a fundamental break from past governmental procurement regimes. One of the key objectives of the Act is to eliminate waste and corruption in the use of municipal assets.
- 8.2. There is a causal link between irregular expenditure, fraudulent, corrupt and theft activities in government and related SCM system abuse and restriction.
- 8.3. For ease of reference the most significant prescripts related to UIFW, fraud, theft and corruption, SCM system abuse as well as its resultant financial misconduct implications as per the MFMA and the SCM TR's are summarised below:

8.4. The table below shows the provisions in the MFMA, SCM TR and FMR related to SCM abuse and UIFW.

*Table 1: UIFW, Fraud, theft, and corruption MFMA provisions:*

PRESCRIPT	PROVISION
<b>MFMA s1 - definitions</b>	<b>Irregular expenditure</b> -Expenditure incurred: - <ul style="list-style-type: none"> <li>• In contravention of OR not in accordance with a requirement of this Act and which has not been condoned in terms of section 170;</li> <li>• In contravention of OR not in accordance with a requirement of the MSA or public office-bearers Act; OR</li> <li>• In contravention of OR not in accordance with a requirement of the SCM Policy of a municipality or By-law and which has not been condoned by such Policy or By-law.</li> </ul>
	<b>Fruitless and Wasteful expenditure</b> -Expenditure incurred in Vain AND Would have been avoided had reasonable care been exercised
	<b>Unauthorised expenditure</b> - expenditure incurred by a municipality otherwise than in budget and includes: - <ul style="list-style-type: none"> <li>• Overspending of the total amount appropriated in the municipality's approved budget;</li> <li>• Overspending of the total amount appropriated for a vote in the approved budget;</li> <li>• Expenditure from a vote unrelated to the Municipality or functional area covered by the vote;</li> <li>• Expenditure of money appropriated for a specific purpose, otherwise than that specific purpose;</li> <li>• Spending of an allocation referred to in paragraph (ii), (iii) or (iv) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or</li> <li>• A grant by the municipality otherwise than in accordance with the MFMA</li> </ul>
	<b>Vote</b> - One of the main segments into which a budget of municipality is divided for the appropriation of money for different functional areas of the municipality; and which specifies the total amount that is appropriated for the purposes of the Municipality or functional area concerned.
	<b>Overspending</b> - When operational or capital expenditure under the vote exceeds the amount appropriated for that vote or when the operational or capital expenditure under the Municipality exceeds the amount appropriated for that Municipality.
<b>MFMA s15</b>	Deals with 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.
<b>MFMA s62 (1)(d)</b>	The AO must take effective and appropriate steps to prevent UIFW and losses resulting from criminal conduct.
<b>MFMA s32(2)</b>	A municipality must recover UIFW from the person liable for that expenditure.
<b>MFMA s32(4)</b>	On <i>discovery</i> of any UIFW, the AO must immediately report the matter to the mayor, the MEC for local government and the Auditor General.
<b>MFMA s32(6)</b>	The AO must inform the SAPS all cases of alleged UIFW that constitutes a

	criminal offence and theft and fraud that occurred in the municipality
<b>MFMA s32(7)</b>	The Council must inform the SAPS all cases of alleged UIFW that constitutes a criminal offence and theft and fraud that occurred in the municipality through actions of the AO.
<b>MFMA s62(1)(e)</b>	The AO must take effective and appropriate disciplinary steps, including criminal action, against any official who has allegedly committed an act of financial misconduct or an offence.
<b>MFMA s125(2)(d)(i) &amp; (ii)</b>	The Annual Report and Annual Financial Statements must include particulars of material losses through criminal conduct and IE and which criminal/disciplinary actions were taken.
<b>MFMA s78(1)(c)</b>	Each official must take effective & appropriate steps to prevent UIFW and under collection of revenue within their area of responsibility.
<b>MFMA circular 68 updated in June 2019</b>	Dealing with the management and treatment of UIFW
<b>SCM TR 38(1)(b)</b>	<p>The delegated authority must:</p> <ul style="list-style-type: none"> <li>• Investigate allegations of UIFW involving SCM practices.</li> <li>• Take appropriate steps against such official or other role-player.</li> <li>• Report alleged criminal conduct to the SAPS.</li> </ul>
<b>PPPFA – R 14</b>	<p><b>Prescribes procedure to follow when fraud or false information is detected:</b></p> <ul style="list-style-type: none"> <li>• 14-day PAJA process.</li> <li>• Then disqualify tenderer OR</li> <li>• Terminate contract in whole or part; AND</li> <li>• Claim damages; OR</li> <li>• Penalise tenderer up to 10% of value of contract if he subcontracted portion of work without disclosing such.</li> </ul> <p><b>Inform NT of:</b></p> <ul style="list-style-type: none"> <li>• Actions taken;</li> <li>• Motivation for restriction; and</li> <li>• Representations from bidder.</li> </ul> <p><b>NT must:</b></p> <ul style="list-style-type: none"> <li>• Consider representations made and decide whether to restrict supplier for up to 10 years; and</li> <li>• Maintain and publish on official website a list of restricted suppliers.</li> </ul>
<b>Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), s 12-13</b>	<ul style="list-style-type: none"> <li>• The Act regulates offences in respect of corrupt activities relating to contracts, activities pertaining to acceptance or offering of any gratification and the improper influence of another person as well as offences in respect of corrupt activities relating to procuring and withdrawal of tenders and auctions.</li> <li>• The Act provides for miscellaneous offences relating to possible conflict of interest and other unacceptable conduct such as acquisition of private interest in contract, agreement, or investment of a public body.</li> <li>• It also provides that National Treasury must establish a register for tender defaulters.</li> </ul>
<b>MFMA circular 43 of 25 May 2007</b>	Dealing with the restriction of suppliers and BBBEE objectives
<b>MFMA circular 46 of 17 March 2008</b>	Dealing with the checking of the prohibition status of recommended bidders
<b>MFMA circular 52 of 9 September 2011</b>	Dealing with the prohibition of restrictive practices (MBD 9)

<b>MFMA circular 56 of 9 September 2011</b>	Dealing with the database of restricted suppliers
<b>MFMA s 171</b>	Defining the characteristics of financial misconduct for an Accounting Officer, Chief Financial Officer, Senior Manager or any other official. These characteristics are summarized to include instances where such official deliberately or negligently: (a) Contravenes a provision of the MFMA or delegation issued in terms of the MFMA; (b) Fails to comply with a duty imposed on or delegated to the official by a provision of the MFMA; (c) Makes or permits an UIFW or instruct another official to make an UIFW. (d) Provides incorrect or misleading information.
<b>MFMA s 171(4)</b>	<ul style="list-style-type: none"> <li>Investigate allegation.</li> <li>Institute disciplinary proceedings as per s 67 of the MSA.</li> </ul>
<b>MFMA s 173</b>	<ul style="list-style-type: none"> <li>Deals with relevant offences.</li> </ul>
<b>MFMA s 174</b>	<ul style="list-style-type: none"> <li>Deals with relevant penalties that may be imposed.</li> </ul>
<b>MFMA s 175</b>	<ul style="list-style-type: none"> <li>Provides for the promulgation of regulations with regards to the management of financial misconduct, procedures, and criminal proceedings.</li> </ul>
<b>FMR, 2014</b>	<ul style="list-style-type: none"> <li>Deals with financial misconduct and financial offences issued under Government Gazette Notice 37699, no. R 430 on 30 May 2014.</li> </ul>
<b>MFMA circular 76 of 19 October 2015</b>	Dealing with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings

#### ***NT guidance on unauthorised expenditure<sup>1</sup>***

8.5. Unauthorised expenditure is defined in section 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 Municipality 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.”*

<sup>1</sup> Refer to MFMA circular 68 of June 2019

- 8.6. **With reference to MFMA section 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.
- 8.7. **With reference to MFMA section 1(b)** – a municipality's operational and capital budgets are divided into 'votes' which represent those components of the budget 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*). Budget Table A4 (*Budgeted Financial Performance: revenue and expenditure*) by implication is approved by the council and as such must also be taken into consideration when determining unauthorised expenditure. In other words, when considering unauthorised expenditure from an operating budget 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 Council has approved a virement policy that allows the AO to make limited shifts of funds between votes, must also be considered.
- 8.8. **With reference to MFMA section 1(c)** – funds appropriated in a vote for a Municipality may not be used for purposes unrelated to the functions of that Municipality. In other words, an accounting officer or other official may not use funds allocated to one Municipality for purposes of another Municipality or for purposes that are not provided for in the budget. Where a Council has approved a virement policy, shifts made in accordance with that policy may be allowed and must be considered when reviewing such expenditure.
- 8.9. **With reference to MFMA section 1(d)** – in addition to appropriating funds for a Municipality's vote, the Council may also appropriate funds for a specific purpose within a Municipality's vote, for example, for specific training initiatives or a capital project. Funds that have been designated for a specific purpose or project may not be used for any other purpose.
- 8.10. **With reference to MFMA section 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 a purpose other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure.

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

8.12. Therefore, valid expenditure decisions can only be made by council in terms of a budget or an adjustments budget. It follows that only the council may authorise instances of unauthorised expenditure and council 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 unauthorised expenditure must be authorised by the municipality in an adjustments budget that is approved by the municipal council. This is the rationale for the provisions in regulation 23(6) of the MBRR which provides the legal framework for the authorisation of unauthorised expenditure.

**Expenditures that are NOT classified as unauthorised expenditure:**

8.13. 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:

- (i) any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA;
- (ii) re-allocation of funds and the use of such funds in accordance with a council approved virement policy;
- (iii) 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
- (iv) 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 overspending of a 'vote' on the main budget Table A5.

**Unauthorised expenditure on "non-cash" items:**

- 8.14. Municipalities have recently raised concern over non-cash items being classified as unauthorised expenditure owing to the total amount of the budget being exceeded. Such expenditure relates to debt impairment, depreciation, asset impairment, transfers and grants as appropriated in Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) of the MBRR.
- 8.15. 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 be the result of poor budgeting or financial management, or unknown events that gave rise to the asset and debt impairment after the adoption of 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.

**Unforeseen and unavoidable expenditure:**

- 8.16. Unforeseen and unavoidable expenditure is discussed in section 29 of the MFMA and reads as follows:
- (i) 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.
  - (ii) 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.
  - (iii) If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 32 applies.
- 8.17. The framework referred to in section 29(2)(a) of the MFMA is prescribed in chapter 5 of the MBRR and contained in regulation 71 and 72. The following shall apply:
- (i) 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) 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) 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) 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.

**Process to be followed when dealing with unauthorised expenditure:**

8.18. In considering authorisation of unauthorised expenditure, council must consider the following factors:

- (i) Has the matter been referred to Council for a determination and decision?
- (ii) Has the nature, extent, grounds and value of the unauthorised expenditure been submitted to Council?
- (iii) Has the incident been referred to a council committee for investigation and recommendations?
- (iv) Has it been established whether the accounting officer or official or public office bearer that made, permitted or authorised the unauthorised expenditure acted deliberately or in a negligent or grossly negligent manner?
- (v) Has the accounting officer informed 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?
- (vi) Are there good grounds shown as to why an unauthorised expenditure should be authorised? For example:
  - a. 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;
  - b. the mayor, accounting officer or official was acting in good faith when making and permitting unauthorised expenditure; and
  - c. the municipality has not suffered any material loss as a result of the action.

8.19. In these instances, the council may authorise the unauthorised expenditure. If unauthorised expenditure is approved by council, there would be no further consequences for the political office-bearers or officials involved in the decision to incur the expenditure.

8.20. 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 that provides that council may only authorise unauthorised expenditure in an adjustments budget.

8.21. Sections 28(c) and 28(g) of the MFMA, read together with regulations 23(1), 23(2), 23(4) and 23(6) of the MBRR, discusses when council may authorise unauthorised expenditure in an adjustments budget.

8.22. This can be addressed in three different adjustments budgets as follows:

- (a) Adjustments budget for unforeseen and unavoidable expenditure: An adjustments budget to allow council to provide ex post authorisation for unforeseen and unavoidable expenditure that was authorised by the mayor in terms of section 29 of the MFMA must be tabled in 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, and may still be authorised in one of the other adjustments budgets process described below.
- (b) Main adjustments budget: In terms of regulation 23(6)(a) of the MBRR, council may authorise unauthorised expenditure in the adjustments budget which may be tabled in council “at any time after the mid-year budget and performance assessment has been tabled in the council, but not later than 28 February of the current year”. Therefore, unauthorised expenditure that occurred in the first half of the current financial year may be authorised by council 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, council may authorise unauthorised expenditure in a special adjustments budget tabled in council when the mayor tables the annual report in terms of section 127(2) of the MFMA. This special adjustment budget “may only deal with unauthorised expenditure from the previous financial year which the council is being requested to authorise in terms of section 32(2)(a)(i) of the Act.” This special adjustment budget therefore deals with:
  - a. 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;
  - b. unauthorised expenditure that occurred in the second half of the previous financial year, and

- c. any unauthorised expenditure identified by the Auditor-General during the annual audit process.

8.23. The timing of this special adjustments budget requires:

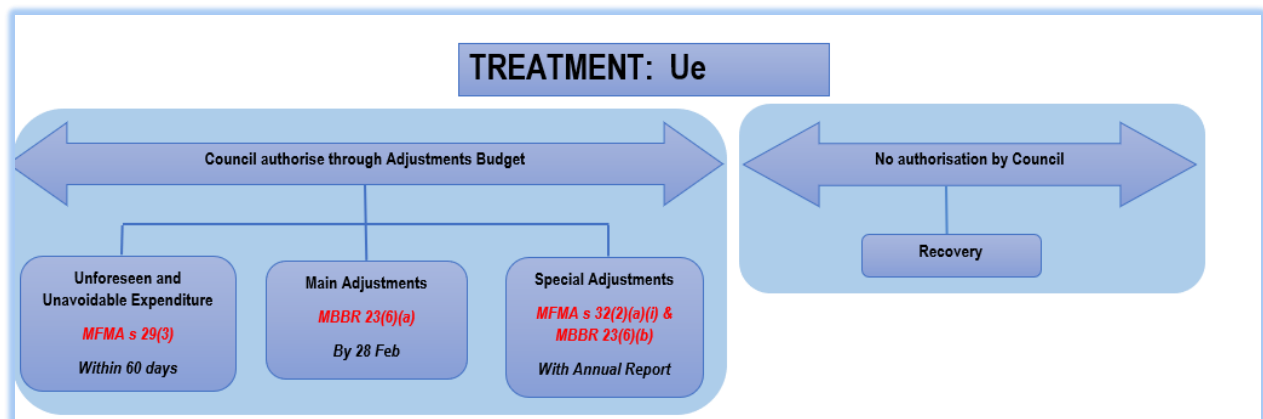
- the municipality to report all the unauthorised expenditure in its annual financial statements (*thus ensuring transparency regarding its performance with implementing the budget*);
- the Auditor-General to audit the municipality's disclosure of its unauthorised expenditure and to add any further unauthorised expenditure identified in the audit process; and
- sufficient time (*but also places a time limit*) for instances of unauthorised expenditure to be thoroughly investigated before being presented to council for a decision on whether or not to authorise it; the investigation is normally done by a council committee.

#### **Recovery of unauthorised expenditure:**

8.24. All instances of unauthorised expenditure must be recovered from the liable official or political office-bearer unless the unauthorised expenditure has been authorised by council in an adjustments budget.

8.25. Once it has been established who is liable for the unauthorised expenditure, the accounting officer must, in writing, request that the liable official or political office-bearer pay the amount within 30 days or in reasonable installments. If the person fails to comply with the request, the matter must be handed to the municipality's legal division for the recovery of the debt through the normal debt collection process.

8.26. Graphically depicted, the treatment phase can be depicted in the figure below:



#### **NT guidance on irregular expenditure**

8.27. Irregular refers to any use of municipal funds that is in contravention of the following legislation:

- (a) Municipal Finance Management Act, Act 56 of 2003, and its regulations.
- (b) Municipal Systems Act, Act 32 of 2000, and its regulations.
- (c) Public Office-Bearers Act, Act 20 of 1998, and its regulations.
- (d) The municipality's supply chain management policy, and any by-laws giving effect to that policy.

8.28. In terms of section 32(2)(b), irregular expenditure may only be written-off by Council if, after an investigation by a council committee, the irregular expenditure is certified as irrecoverable. In other words, writing-off is not a primary response, it is subordinate to the recovery processes, and may only take place if the irregular expenditure is certified by Council as irrecoverable.

8.29. **With reference to (a) as defined**, - 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 Act 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 its Regulations. Section 32(2)(b) of the MFMA provides the council only with the power to consider and resolve on the expenditure. Municipal Councils are therefore advised to ensure that the wording of their council resolutions are consistent with the wording in section 32(2)(b) of the MFMA i.e. "council hereby certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds". Municipal councils should note that its ability to resolve on the irregular expenditure is not dependent on National Treasury's decision in relation to the municipality's application for condonation in terms of section 170. It is solely dependent on the investigation and recommendation from the council committee. Whatever the municipal council resolves is sufficient for the municipality to adjust its annual financial statements from an accounting disclosure perspective. The treatment of expenditure associated with the non-compliance is therefore the responsibility of the Council and is elaborated on later in this Circular.

8.30. **With reference to (b) as defined** – there is no provision in the Municipal Systems Act that allows for a contravention of the Act to be condoned. Nevertheless, should a municipality wish to request that an act of non-compliance with any provision of the MSA be condoned, then the accounting officer should address the request to the Minister of Co-operative Governance and Traditional Affairs, who is responsible for administering the MSA. The resultant expenditure should however be dealt with in terms of section 32(2) of the MFMA.

8.31. **With reference to (c) as defined** – 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.

- 8.32. **With reference to (d) as defined** – a 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 (a) applies and then only 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](mailto:mfma@treasury.gov.za) for consideration. Municipalities and municipal entities are cautioned that this is an onerous process and should not be taken lightly.
- 8.33. Once the Accounting Officer or Council becomes aware of any allegation of irregular expenditure, such allegation may be referred to the municipality's disciplinary board or any other appropriate investigative body for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official liable for the expenditure. Further guidance on the processes to follow in investigating allegations of financial misconduct can be found in the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings read with MFMA Circular 76.
- 8.34. The municipality must quantify the total amount of irregular expenditure unless it is impractical to do so. In terms of GRAP3, applying a requirement as impracticable is when the municipality cannot apply it after making every reasonable effort to do so. Insufficient time cannot be used as a justification for impracticability.
- 8.35. The municipality's exercise of quantifying the irregular expenditure must focus on the year under review. However, if the non-compliance was identified on a multi-year contract that was identified in prior years, the irregular expenditure on that specific contract must be quantified from inception of the contract. Furthermore, if the municipality was qualified on the completeness of irregular expenditure in the prior year(s), the municipality's exercise of quantifying the full extent of the irregular expenditure must date back to the year the qualification was reported, in order to ensure that the qualification is sufficiently addressed.
- 8.36. A municipality may only disclose impracticability after making every reasonable effort to quantify the full extent of the irregular expenditure.

**NT guidance on fruitless and wasteful expenditure**

- 8.37. FWe is defined in section 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.”*

- 8.38. The concept of fruitless and wasteful expenditure is founded on public administration and accountability principles, to promote “efficient, economic and effective use of resources and the attainment of value for money”. The idea is also founded on the fact that the council, the mayor and the accounting officer have a fiduciary responsibility to ensure that municipal resources are used in the best interests of the municipality and the local community.
- 8.39. 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 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.

## **PART 9: ROLES AND RESPONSIBILITIES**

- 9.1. The management of any form of UIFW, SCM abuse and related consequence management by its nature involves various role-players, who are involved prior or during the process with different mandates. This Part identifies the most significant role-players and their mandates with regards to this process.
- 9.2. The most significant role-players and their mandates are:
- (i) **SCM Unit practitioners** – to advise on an incident of SCM System abuse and whether such activity resulted in an irregular expenditure.
  - (ii) **FI/SAPS** – to determine whether an irregular expenditure and/or SCM System abuse activity resulted in fraud or corruption.
  - (iii) **MFMA section 32 Council Committee** – to monitor and advise on the management of UIFW matters and to recover resultant expenditure.
  - (iv) **Legal Services** – to provide legal support on questions of law, the management of resultant legal actions and to assist with the determination of liability in law.
  - (v) **Office of the CFO** – to manage and treat any UIFW activity, as well as to address any identified control weaknesses and training requirements.
  - (vi) **Audit Committee** – to monitor the impact of UIFW on the effective financial management of the municipality.
- 9.3. **Investigating officials must:**
- (i) Be appropriately mandated to perform the investigation.
  - (ii) Be thoroughly trained in the application of this SOP.



- (iii) Have appropriate 'confidential clearance'.
- (iv) Have appropriate access to relevant municipal systems.

**9.4. The Office of the CFO must:**

- (i) Maintain a matrix (spreadsheet) of UIFW, SCM abuse and consequence management related information that will allow the recording of trends, such as identified risk areas, significant control weakness areas and pockets/areas of non-compliance. These trends and its analysis will assist management in taking action to improve financial governance practices.
- (ii) Report the status of UIFW, SCM abuse and consequence management to the Mayor, MEC for local government in the province and the Auditor General on a quarterly basis and monthly to the CFO, AO, and PT through the in-year monitoring reporting mechanism.
- (iii) Assist with the determination of liability in law of suppliers.
- (iv) Make recommendations on the recovery of the relevant UIFW.
- (v) Arrange listing of service providers' prohibition of doing business with the State – 'restriction'.

**9.5. Human Resource Management (HRM) must:**

- (i) Determine the related disciplinary process emanating from UIFW, SCM abuse and consequence management.
- (ii) Determine liability in law and sanctioning of officials/employees.

**PART 10: DETECTION AND NOTIFICATION**

- 10.1. On detection of alleged UIFW or SCM abuse, the relevant 'detector' must refer the matter to the AO or delegated authority who will record the matter and refer it to the CFO or designated person.
- 10.2. In instances where the AO is implicated the notification must be addressed to the Executive Mayor.
- 10.3. The CFO or designated person must register the alleged UIFW or SCM abuse, classify and validate the allegation and, together with the AO, make a pre-liminary management decision on further action, inclusive of the facilitation for a further investigation as mandated by the MFMA s 32 committee and/or Disciplinary Board if relevant.
- 10.4. The following table provides indicators of activities through which UIFW could be detected pro-actively (P) or re-actively (R):

Table 2 – UIFW detection:

INDICATOR	P	R
1. Assessment of Annual Budgets	X	
2. Assessment of Strategic Plans	X	
3. Assessment of Annual Performance Plans	X	
4. Assessment of Monthly in-year revenue expenditure reports		X
5. Assessment of Adjustments Budget	X	
6. Execution of directives from the Council	X	
7. Examination of AGSA findings		X
8. Examination of IA findings		X
9. Interpretation of Annual Reports		X
10. Interpretation of Interim and Annual Financial Statements		X
11. Examination of PT Reports	X	X
12. Whistle blowing		X
13. Commitment of expenditure	X	
14. SCM spending analysis		X
15. Contract negotiation	X	
16. Contract conclusion	X	
17. Contract termination	X	X
18. Authorisation of payments		X
19. Verification of payments		X
20. Observation	X	
21. Examination of Standing Committee reports		X
22. Perusal of Media reports		X
23. Examination of Enterprise risk management findings	X	
24. Examination of forensic investigation findings		X
25. Tender adjudication	X	
26. Regulatory compliance testing		X
27. Examination of official disciplinary outcomes		X

**Without being exhaustive, the following incidences will be regarded as incidences of SCM abuse:**

10.5. Fronting, also referred to as “tokenism” or “window dressing”, which refers to the practice of fraudulently manipulating the supply chain management process to secure a preference for the purpose of being awarded a contract. This is achieved through the fraudulent misrepresentation of a business’s Broad Based Black Economic Empowerment [B-BBEE] or Historically Disadvantaged Individual [HDI] status by, without limiting the generality of the foregoing:

- (i) Appointing HDI’s as fictitious shareholders or members in essentially “white” businesses, where such HDI’s are token appointees who are excluded from active and meaningful participation in the management, decision-making and/or financial oversight of the business; or
- (ii) Through the establishment of a front Black Economic Empowerment [BEE] company which fulfils the same role a sister “white-owned”, or white majority-owned company, save that all the work is channelled through the BEE vehicle and is still done by the none-BEE sister company which, in turn, takes most (or all) of the profits.

10.6. Collusive Tendering, which refers to the practice by which tenderers come to an unlawful arrangement amongst themselves in order to secure the award of a contract at the highest possible price by eliminating the competition. This is achieved where, for example, one tender submits a bid at an agreed maximum price, while the other tenderers who are party to the fraudulent arrangement, submit “cover bids” at higher prices in order to create an impression of competition, thereby ensuring that the winning contractor is pre-determined. The resulting profit is then shared amongst the tenderers who are party to the scheme in accordance with their prior arrangement.

10.7. Influencing the Tender Process, which refers to an act or omission on the part of a tenderer, which has the result of manipulating, whether directly or indirectly, the supply chain management process, by inter alia:

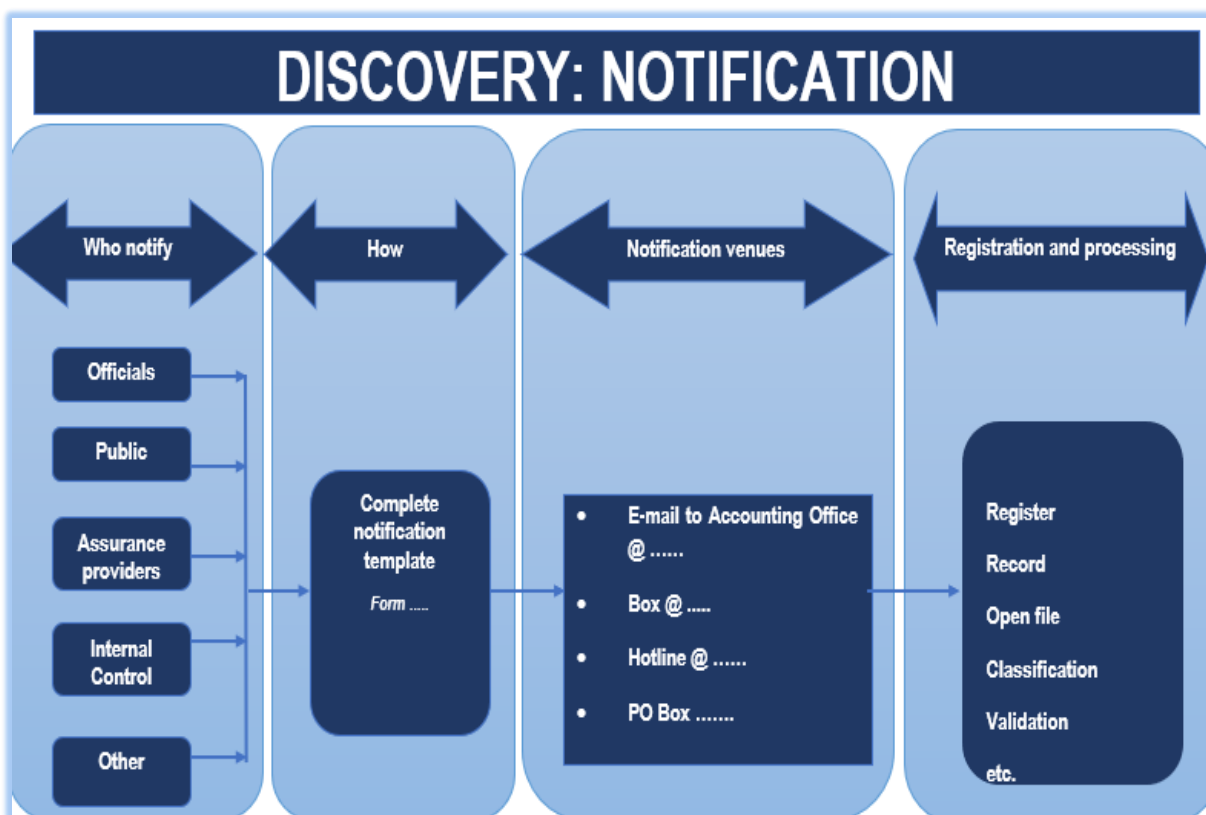
- (i) Influencing the award of a contract.
- (ii) Inciting a breach of ethics by a Municipality employee of councillor through inter alia, bribery and/or an encouragement to breach confidentiality.
- (iii) Causing over- or under-invoicing.
- (iv) Influencing the choice of procurement process.
- (v) Influencing the choice of technical standards.

- (vi) Generally doing anything to influence a municipal official, employee or councillor, whether directly or indirectly, in order to secure an unfair advantage during any stage of the procurement process, where pre- or post-award.
- 10.8. Misrepresentation on eligibility documents or application forms or any other returnable document which contains information which will have a material bearing on the award.
- 10.9. Deliberately omitting information, or misrepresenting information which would have a bearing on the award of a tender.
- 10.10. Fraud related to systems and related matters, i.e. where a process/system exists which is prone to abuse by officials/employees, the public or other stakeholders. The following serves as examples:
- (i) Procurement fraud, e.g. irregular collusion in the awarding of tenders or placing of orders for goods and/or services.
  - (ii) Irregularities in the effecting of transfer payments.
  - (iii) Deliberate non-compliance with delegation of authority limits
  - (iv) Collusion in contracts management.
  - (v) Receipts fraud, e.g. pocketing of revenue received and rolling of cheques.
  - (vi) Travel and subsistence fraud, e.g. falsifying of substantiating documents and/or claims.
  - (vii) Disclosing confidential or proprietary information to outside parties.
- 10.11. Fraud related to financial and related matters, i.e. where officials/employees, individuals or companies have obtained money, services, and assets. The following serves as examples:
- (i) Syndicate fraud, e.g. interception of warrant vouchers.
  - (ii) Creditor's fraud, e.g. diverting payments to incorrect creditors.
  - (iii) Service providers submitting invalid invoices or invoicing for work not done.
  - (iv) Payroll fraud, e.g. creation of "ghost employees".
  - (v) Theft of money and assets.
  - (vi) Enrichment from insider knowledge.
- 10.12. Fraud related to equipment, resources, and related matters, i.e. where the Municipality's equipment is utilised for personal benefit or stolen. The following serves as examples:
- (i) Theft of assets, e.g. furniture, stationary, fuel, computers and face value forms.
  - (ii) Personal use of resources inconsistent with Municipal policy, e.g. telephones, internet, government vehicles and e-mail.
  - (iii) Irregular destruction, removal, or abuse of records (including intellectual property).

- (iv) Illegally obtaining information on the contents of other bids in the same tender which one would not ordinarily be entitled to in terms of the Promotion of Access to Information Act [PAIA] No. 2 of 2000, which information is in the possession and under the control of the Municipality.
  - (v) Restrictive horizontal and vertical practices as defined by the Competition Act, the so-called restrictive commercial practices.
- 10.13. Termination of contract due to continuous non-performance and/or default on a contract in the public/government sector by wilfully or negligently:
- (i) failing to perform at all.
  - (ii) failing to complete work timeously without good reason.
  - (iii) delivering defective performance, i.e. poor workmanship, or substandard materials.
  - (iv) being in breach of a material term of the contract.
  - (v) failing to achieve a specified participation goal as set out in the tender documents.
  - (vi) despite being given written notice to remedy non-performance.
- 10.14. The following intentional or negligent non-compliance actions by officials may also be regarded as SCM abuse:
- (i) Disregard or failure to implement preventative or corrective measures imposed to address risks.
  - (ii) Lack of willingness to comply with legal obligations.
  - (iii) Perpetrated or participated in negligent, deceitful, or otherwise discreditable practices.
  - (iv) Seriously or persistently fail to execute assigned duties.
  - (v) Non-compliance with internal policies, procedures, legislation, and regulations.
  - (vi) Having acted dishonestly, with negligence, mismanaged responsibility, unprofessionally, unethically and in breach of Municipal policies.
  - (vii) Unethical, malicious, or other improper conduct which may be in breach of the Municipality's Code of Ethics and/or values or in breach of the law generally.
  - (viii) Breach of administrative procedures, including the Municipal Delegations of Authority.
  - (ix) Any other conduct that may cause financial or non-financial loss, or is otherwise detrimental, to the interests of the Municipality.

10.15. Notification can be illustrated as per figure 2 below:

Figure 2: UIFW and SCM Abuse Notification:



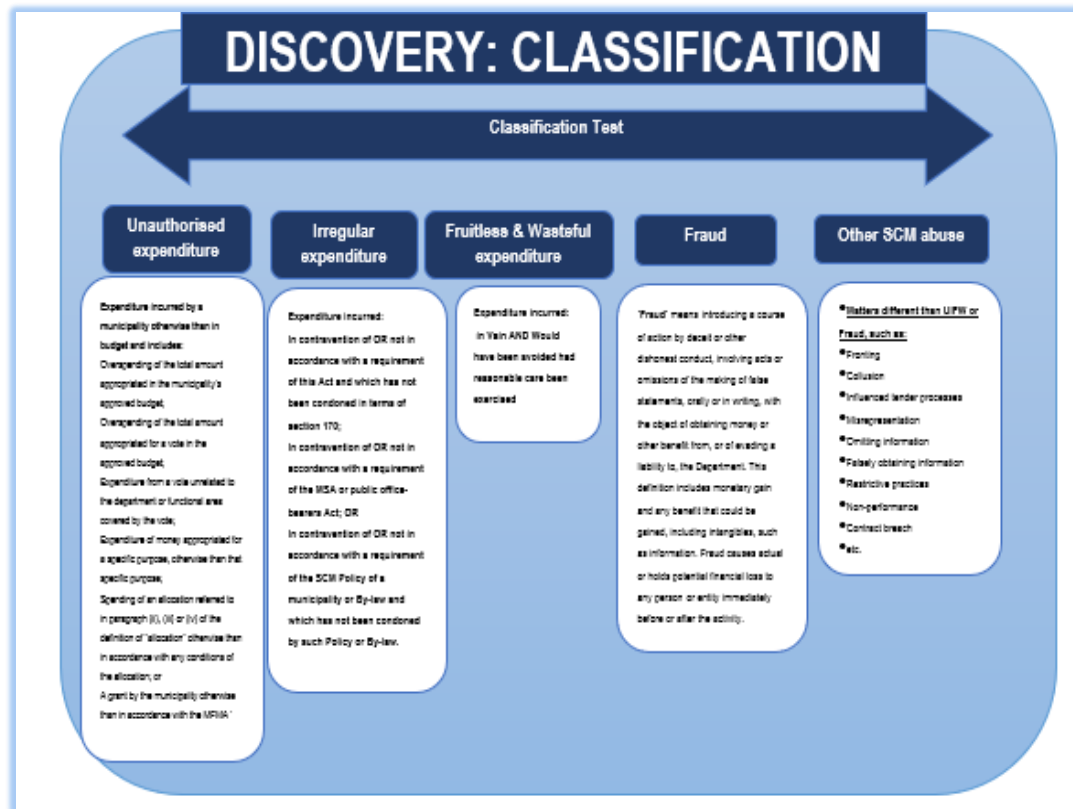
## PART 11: CLASSIFICATION AND MATERIALITY DETERMINATION

11.1. The Municipality will register the matter and classify the notification into one or more of the following categories:

- (i) No case,
- (ii) Unauthorised, irregular or fruitless and wasteful expenditure [UIFW], and/or
- (iii) Fraud, and/or
- (iv) SCM abuse.

11.2. The following considerations will be made to assess or classify the reported incidence as graphically depicted below.

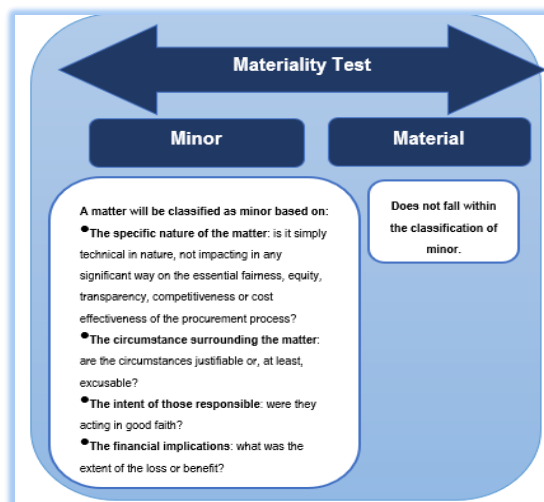
Figure 3: Classification of UIF or SCM abuse – refer to Annexure ... for readable version:



11.3. Once classified, the Municipality will consider the viability and materiality of the matter and if found to be a valid and material incidence of SCM abuse, direct further investigation and/or action.

11.4. The following considerations will be made to determine the materiality of the reported incidence as graphically depicted below.

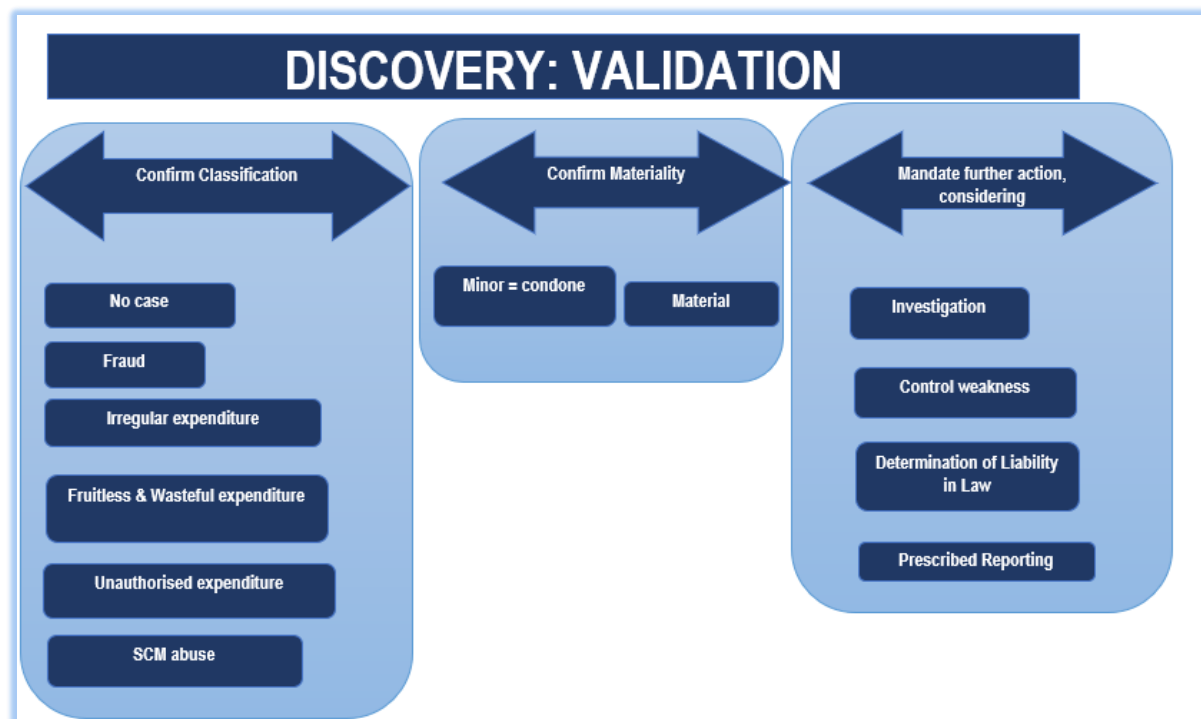
Figure 4: Determination of materiality of incidence of SCM abuse:



11.5. At this stage, the relevant designated persons will make a pre-liminary determination of the validity of allegation and confirm further actions.

11.6. Graphically depicted this validation process is described as follows:

*Figure 5: Validation of UIFW or SCM abuse:*



## PART 12: INVESTIGATION

12.1. Depending on the classification, materiality determination and validation of the matter, the following role players will be approached to formally investigate the matter:

- (i) **Fraud:** AO to determine who conducts investigation, but matter must be referred to SAPS.
- (ii) **UIFW:** Office of CFO
- (iii) **SCM Abuse:** SCM Manager as follows:
  - a. Restrictive commercial practice: To forward case file to Competition Commission
  - b. Fronting: To forward case file to BBBEE Commission
  - c. Other matters related to SCM system abuse which is not addressed in a and b above: SCM Manager.

12.2. The investigations in general will *inter alia* include the following activities:

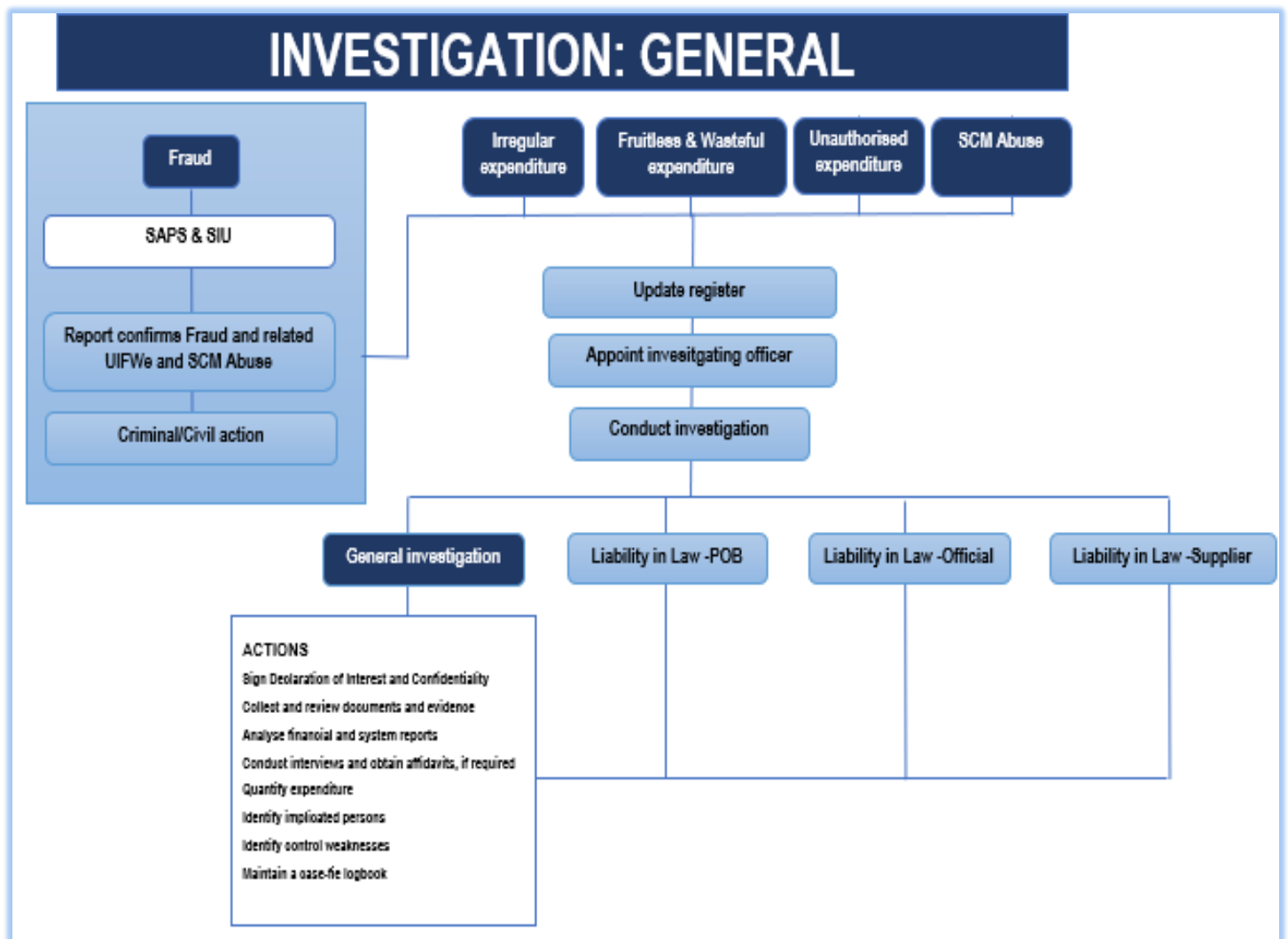
- (i) Conduct interviews.
- (ii) Obtain affidavits where relevant.
- (iii) Examine relevant documents.



- (iv) Consult with others, where relevant.
- (iv) Investigate systems applied, etc.
- (v) Consider the liability in law of officials and/or service providers.
- (vi) Maintain case file logbook.

12.3. The following figure graphically depicts the investigation process.

*Figure 6: Investigation process:*



12.4. Once the investigation is completed, a final report on the findings and recommended treatment will be prepared for the relevant Committee to consider and to make recommendations for further actions.

12.5. The report will consider at least the following elements:

- (i) The root causes.
- (ii) The employee(s) and/or service providers responsible.
- (iii) Whether the Municipality suffered a loss.
- (iv) Any breakdown in the designed internal controls.

### **External advisors to conduct investigation**

12.6. In the following circumstances, the AO may consider obtaining an external opinion:

- (i) Matter contains technical or legal arguments that are specialised, overly complex, and/or controversial.
- (ii) The technical or legal expertise required to respond to the issues are not available within the Municipality.
- (iii) Due to controversy surrounding the matter.

12.7. Criteria to be used to place SCM related abuse in this category include:

- (i) The tender process was high profile and local, national, and/or international organisations were involved.
- (ii) The grounds of the SCM matter contain specialised technical arguments that require expert responses.
- (iii) The grounds of the SCM matter contain technical and complex legal arguments that require expert responses.
- (iv) The grounds of the SCM abuse include political arguments or relates to government policy.
- (v) The outcome of the SCM dispute or compliant, if upheld, will result in an irregular expenditure as envisaged in the MFMA.
- (vi) Senior Managers were involved in the SCM process.

12.8. The AO, via the CFO and SCM Unit, will procure the services of required expert/s, which may include the nomination of experts from a panel so procured. This could be on the areas recommended by the CFO or any other issue where the AO desires and external opinion.

12.9. After appointment, the experts must be informed of the format in which the reports are required, the timeframes for responses and invites them to attend relevant Committee meetings to present their findings and recommendations.

12.10. The external expert(s) will consider the matter and forward their responses within 21-days to the AO or designated person who will facilitate further consultation.

### **PART 13: LIABILITY IN LAW DETERMINATION OF PUBLIC OFFICE BEARERS**

13.1. Note that this Part only deals with UIFW from Political Office Bearers and prescribed by the FMR read with the Code of Conduct of Councilors in Schedule 1 to the MSA.

13.2. MFMA s 31(2)(a); (c) and s 173(4) – (5) read with the promulgated FMR's apply when dealing with UIFW expenditure and related Financial Offences relevant to Councilors.

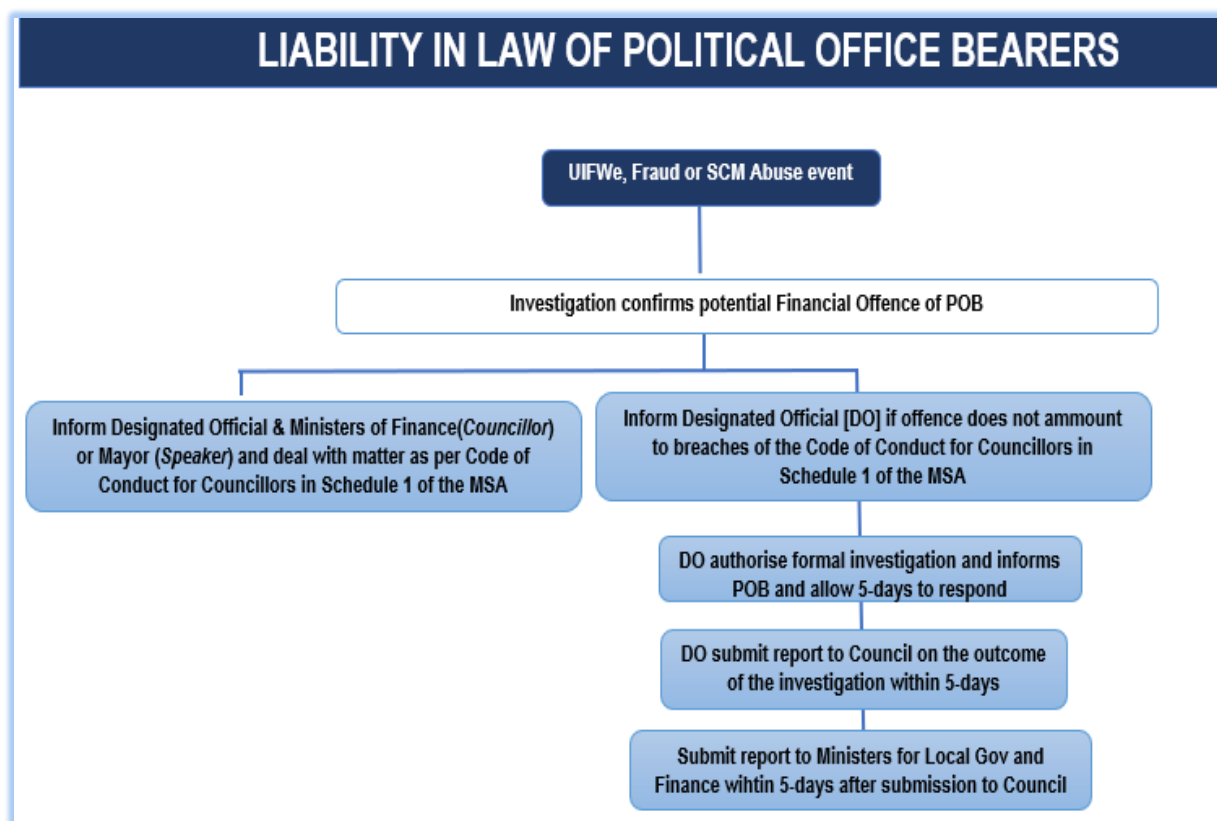
13.3. As per MFMA s 32(2) the Municipality MUST recover any UIFW from the person liable for that expenditure.

13.4. Refer to discussions at Part 14 below relevant to determining the liability in law of officials which will apply *mutatis mutandis* to Councilors.

13.5. With MFMA circular 76 of 19 October 2015, the NT confirmed that the FMR's are interlinked with the disciplinary processes prescribed for Political Office Bearers and the arrangements were aligned.

13.6. Graphically, this process is depicted in Figure 7 below:

*Figure 7: Process to determine liability of a political office bearer:*



## **PART 14: LIABILITY IN LAW DETERMINATION OF OFFICIALS**

14.1. Note that this Part only deals with UIFW from Municipal Officials, Municipal Senior Managers, or the AO.

14.2. MFMA s 175 read with the promulgated FMR's apply when dealing with Financial Misconduct cases relevant to UIFW in respect of Municipal Officials.

14.3. As per MFMA s 32(2) the Municipality MUST recover any UIFW from the person liable for that expenditure.

14.4. Neither the MFMA nor the said FMR's define the term 'liable' and reference is thus had to the legal definition of 'Liable' meaning: '*Legal liability. ... In law, liable means "[r]esponsible*

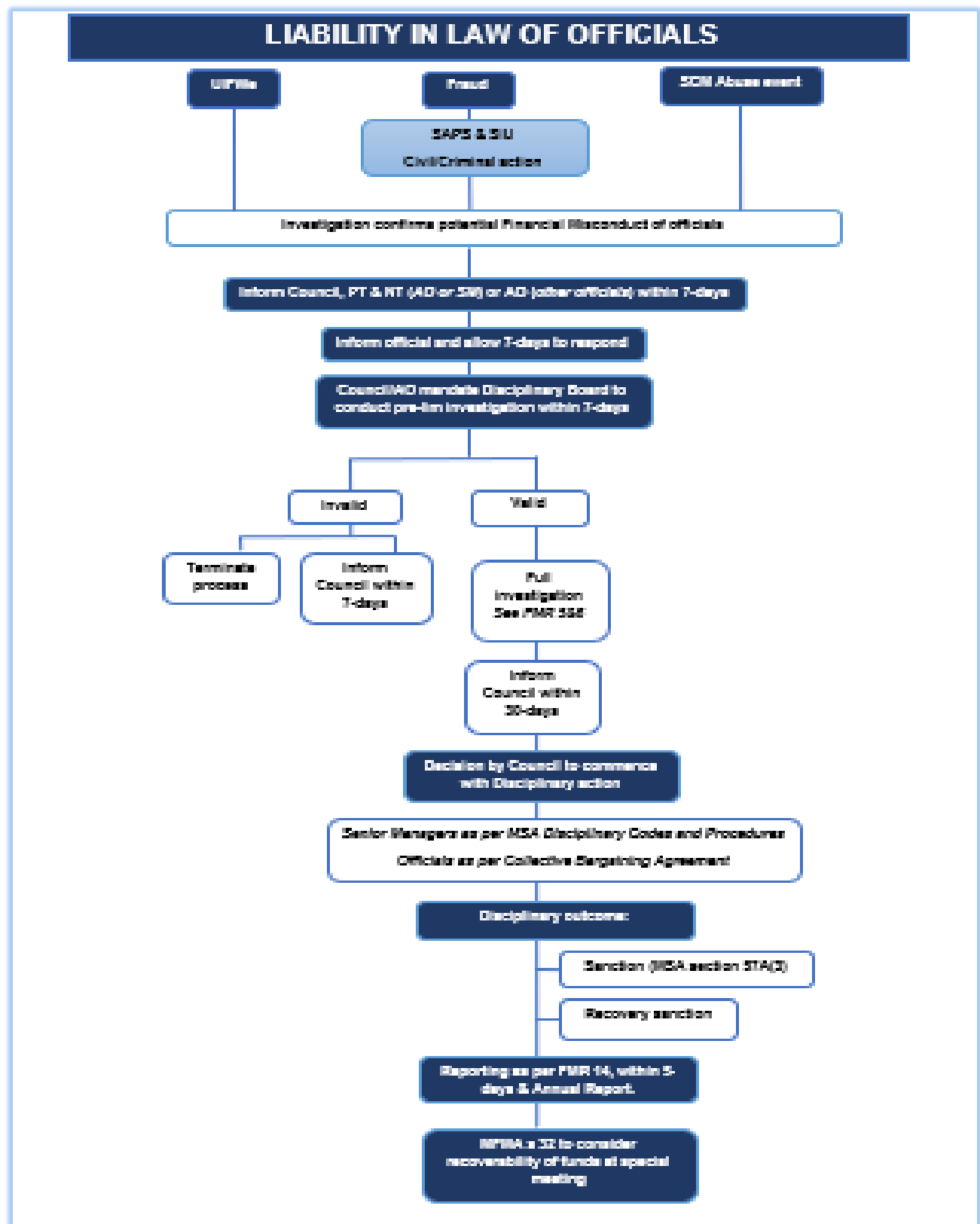
*or answerable in law; legally obligated. Legal liability concerns both civil law and criminal law and can arise from various areas of law, such as contracts, torts, taxes, or fines given by government agencies.'*

- 14.5. Further to the above, the Bill of Rights in the Constitution of the Republic of South Africa, 1996, s35(3)(m) provides that: *"Every accused person has a right to a fair trial, which includes the right not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted."*
- 14.6. In the Municipal sphere, employers are entitled to set their own standards regarding discipline and penalties either in a disciplinary code or by incorporation thereof in a collective agreement, which was done for normal employees as per the Collective Agreement concluded on 21 April 2010. For Senior Managers and the Accounting Officer, Disciplinary Regulations were issued in terms of the MSA, via Government Gazette Notice 34213, no. 344 of 21 April 2011.
- 14.7. All of the above, prescribe that a fair process must be followed prior to an official being held 'liable' for an act or omission.
- 14.8. The determination of such 'liability', depends on the test of fairness. The fairness of disciplinary action involves three dimensions, namely substantive fairness, procedural fairness, and consistency which are inherent to the concept of fairness.
- (i) **Substantive fairness** relates to the reason for the disciplinary action against an employee and determining whether the employee is, on a balance of probability, guilty of an alleged transgression. It also relates to the appropriateness of the sanction meted out by the employer in the event that the employee was found guilty of an alleged offence. **Substantive fairness in the context of the relevance and application of the doctrine of double jeopardy concerns the employer's authority to determine guilt and sanction where these disciplinary functions have been delegated to and executed by a designated chairperson.**
- (ii) **Procedural Fairness:** The second dimension of disciplinary fairness canvassed herein narrates the *audi alterem partem*-maxim. This maxim has been established by labour courts as one of the corner stones of procedural fairness in disciplinary action short of dismissal. The Labour Relations Act and the Code of Good Practice compel an employer to afford an employee an opportunity to respond to allegations of misconduct before the decision to dismiss is taken. A pre-dismissal hearing is a pre-requisite for fair dismissal. In double jeopardy cases procedural fairness relates to an opportunity to make representations to the actual decision-maker.

**(iii) Consistency:** *Fairness requires that like cases should be treated alike. Consistency is a basic tenet of fairness whereby every employee is measured by the same standards.*

- 14.9. The prescripts and rules defined above provide that prior to recovery of any UIFW resulting from an incidence of SCM System abuse, a fair process must be followed to determine the relevant official's 'liability'.
- 14.10. It is therefore not possible to institute an action of recovery for UIFW and/or disciplining an official for SCM System abuse, without instituting a fair disciplinary process to determine whether 'financial misconduct' and/or SCM System abuse, is evident.
- 14.11. With MFMA circular 76, the NT confirmed that the FMR's are interlinked with the disciplinary processes prescribed for Senior Managers as well as the collective agreement concluded with regards to municipal officials.
- 14.12. NOTE that the PT or NT may intervene in the event if the Municipality fails to investigate financial misconduct as per the FMR 19.

Graphically, this process is depicted in Figure 8 below:



## PART 15: LIABILITY IN LAW DETERMINATION OF SERVICE PROVIDERS

15.1. With regards to fraud -, restrictive commercial practices and IFW management, the sanctions imposed by the relevant bodies will apply.

15.2. For purposes of this Part 15, the treatment activities will only relate to consequence management actions against service providers who was found guilty of an incidence of SCM abuse, irrespective its classification.

15.3. Where the abuse of the Supply Chain Management System is as a result, whether direct or indirect, of fronting or any other form of fraud on the part of a supplier/service provider or its representative/s, the AO is mandated, in terms of Regulation 14(1) of the PPPFA Regulations, upon detecting that a preference was awarded as a result of such fraud, to take active steps against the supplier/service provider.

15.4. The AO has a wide discretion as to which remedial and/or punitive steps he/she may choose to take to address such fraud, including *inter alia* those remedies set out in sub-regulation 14(2) of the PPPFA Regulations, which is provided below *at seriatim*:

*“14. (1) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-*

*(a) inform the tenderer accordingly;*

*(b) give the tenderer an opportunity to make representations within **14 days** as to why-*

*(i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;*

*(ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and*

*(iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and*

*(c) if it concludes, after considering the representations referred to in sub-regulation (1)(b), that-*

*(i) such false information was submitted by the tenderer-*

*(aa) disqualify the tenderer or terminate the contract in whole or in part; and*

*(bb) if applicable, claim damages from the tenderer; or*

- (ii) *the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.*
- (2) (a) *An organ of state must-*
  - (i) *inform the National Treasury, in writing, of any actions taken in terms of sub-regulation (1);*
  - (ii) *provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and*
  - (iii) *submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.*
- (b) *The National Treasury may request an organ of state to submit further information pertaining to sub-regulation (1) within a specified period.*
- (3) *The National Treasury must*
  - (a) *after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and*
  - (b) *maintain and publish on its official website a list of restricted suppliers.”*

15.5. SCM TR 38 further mandates the AO to *inter alia*: -

- (i) Initiate an investigation, whether internal or external, of a suitable nature pursuant to any allegations and/or indications of the abuse of the SCM System by a supplier/service provider, and take appropriate action following the outcome of such investigation, including *inter alia*, reporting any alleged criminal conduct to the South African Police Service for the purposes of criminal prosecution.
- (ii) Reject a recommendation for the award of a contract if the recommended bidder or its representative/s, has committed a corrupt or fraudulent act, which *prima facie* amounts to abuse of the SCM System, in completing for the contract.
- (iii) Reject a Bid from a suppliers/service provider, with due notice and on *prima facie* evidence of the following: -
  - Municipal rates, taxes or municipal service charges owed by that supplier/service provider or its representative/s to the Municipality, or to any other municipality, have been in arrears for more than three months as at the date of submission of the bid.
  - The supplier/service provider, or its representative/s has, in the past 5 (five) years as at the date of the invitation to bid, failed to perform satisfactorily on a previous contract with the Municipality, or any other organ of state,



notwithstanding the fact that written notice was given to that bidder indicating that performance was unsatisfactory.

- The supplier/service provider, or its representative/s has, in the past 5 (five) years as at the date of the invitation to bid, committed an act of abuse of the SCM System of the Municipality, or has committed any improper, irregular, or unlawful conduct in relation to the supply chain management system.
  - The supplier/service provider, or its representative/s has, in the past 5 (five) years as at the date of the invitation to bid, wilfully neglected, reneged on or failed to comply with any government, municipal or other public-sector contract.
- (iv) Reject the bid of a supplier/service provider on receipt of written verification that that person or any of its representatives has, in the past 5 (five) years: -
- That has been convicted of fraud or corruption; or
  - That has been blacklisted on: -
    - a) The Register of Tender Defaulters in terms of section 29 of the Prevention of Combating of Corrupt Activities Act, 12 of 2004.
    - b) The National Treasury's Database as a person prohibited from doing business with the public sector.
    - c) The Municipal Register of Tender Defaulters, only applicable in the event of continuous poor performance or breach of contract.
- (v) Cancel a Contract awarded to a supplier/service provider if: -
- The supplier/service provider, or its representative/s, committed a corrupt or fraudulent act amounting to abuse of the SCM System, during the bidding process or in the execution of the contract.
  - The supplier/service provider, or its representative/s incited a corrupt or fraudulent act amounting to irregular conduct, on the part of an official, employee or Councillor of the Municipality, which act, directly or indirectly, resulted in the award of the contract to the supplier/service provider.

15.6. On obtaining *prima facie* evidence after the investigation process or otherwise, of an instance of abuse of the SCM System by a service provider and/or its representative/s, the Municipality shall, prior to taking any steps to combat such abuse, and in accordance with the prescripts of the *audi alterum partem* [right to be heard] principle, give the service provider adequate written notice of the manner in which it is alleged that the SCM System was abused.

**Adequate notice shall include the following:**

- 15.7. Specify, with sufficient particularity, the grounds on which it is alleged that the service provider/service provider committed an act of abuse of the SCM System and indicate the nature of such alleged abuse in order to enable the service provider to respond properly to the allegations stipulated in the notice.
- 15.8. Refer to the applicable provisions of the SCM Policy in terms of which the Municipality may proceed to take steps against the service provider/service provider on finding that such person committed an act of abuse of the SCM System.
- 15.9. Stipulate that the service provider/service provider is, in accordance with the *audi alteram partem*, invited to make written representations in response to the notice within fourteen (14) calendar days from the date on which the notice was served to the service provider/service provider.
- 15.10. Indicate that any such written representations received by the Municipality after the due date for submission as above, shall be disregarded, save where the service provider/service provider can show good cause for the consideration of such written representations by way of a request for condonation for the late lodgement of such representations and provided that such request shall not result in unreasonable delays of otherwise prejudice the public interest.
- 15.11. Include the following particulars of the relevant municipal official to whom the written representations, and/or any other correspondence required, must be sent: -
- (i) Full name.
  - (ii) Official title.
  - (iii) Postal address.
  - (iv) Street address.
  - (v) Telephone number.
  - (vi) E-mail address.
  - (vii) Right of access to information:
- 15.12. On furnishing the service provider with the notice referred above, Municipality may, in addition, grant such a person access to all documents upon which Municipality intends to rely in respect of the allegations of abuse of the SCM System by the service provider.
- 15.13. Service providers are entitled to request any additional information from Municipality in accordance with the provisions of PAIA for the purposes of furnishing written representations. Where such additional information is requested, Municipality may, at its sole discretion and upon a written request to do so, extend the time period

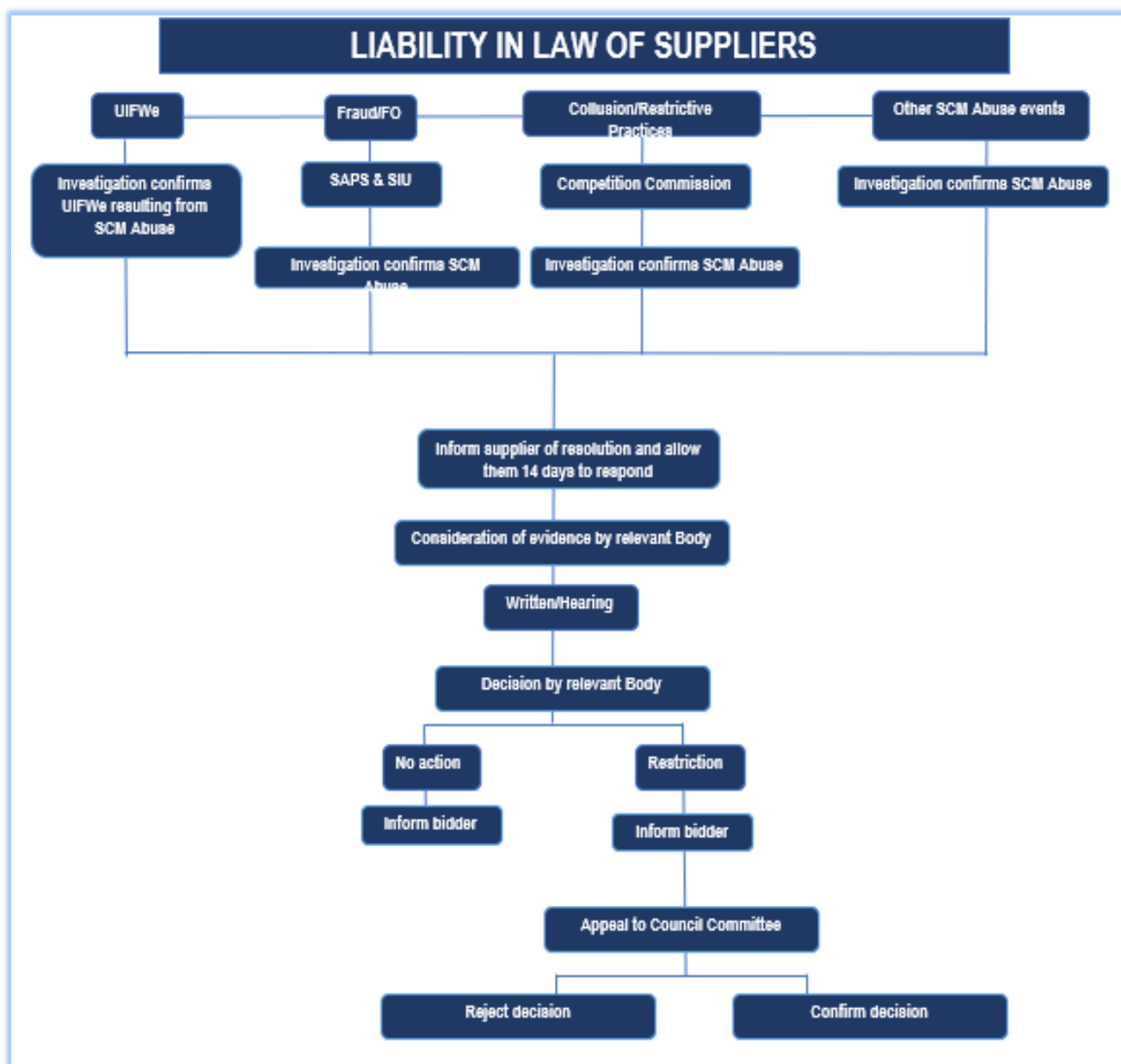
contemplated above in order to give the service provider/service provider adequate time to consider such additional information.

- 15.14. The Municipality will consider the written representations of service providers in determining whether there has indeed been abuse of the SCM System as contemplated herein, and if so, what punitive steps Municipality ought to take.
- 15.15. The adjudication of written representations pertaining to instances of abuse of the SCM System by a service provider shall be conducted as per the provisions of this FSOP.
- 15.16. Once the response is received, the SCM: Manager will advise the service provider of a date for consideration of the matter.
- 15.17. This notice shall advise both parties of the date for consideration by the relevant Committee established for this purpose, which shall be a date not less than twenty (20) calendar days from the date of the notice.
- 15.18. The service provider may submit, a statement setting out the basis of any denial and any supporting documents and should he/it wish to present evidence in person, that he/it is to advise so that suitable arrangements may be made.
- 15.19. If the service provider does not respond to the first notice despite proper notification, he shall be deemed to have no objection and the blacklisting authority may proceed with the consideration and finalisation of the matter.
- 15.20. Any documentation received from the service provider shall be made available to the applicant, who may file a written response thereto. A copy of which shall be made available to the respondent.
- 15.21. The relevant Committee established for this purpose shall:
  - (i) Not be precluded from calling for oral evidence on issues of clarity or dispute of fact.
  - (ii) Allow the respondent to make oral representations where he has exercised the right to do so, in advance.
  - (iii) Shall decide on the facts before it, and issue and order within ten (10) working days after the conclusion of the hearing.
- 15.22. If the relevant Committee is satisfied that there are grounds to restrict (black-list) a service provider, it must decide on the restriction (black-listing) period based on the merits of each matter and make a recommendation to the AO for final decision. The relevant committee shall take into account, *inter alia*, the following:
  - (i) The seriousness of the offence.
  - (ii) Previous similar conduct in bidding processes in other municipalities and Municipality when imposing the sanction.

- (iii) The hardship/inconvenience that has been occasioned by the service provider's conduct.
  - (iv) Other remedies which the Municipality has/may invoke.
  - (v) The financial loss by the Municipality.
- 15.23. The Municipality shall impose on bidders or prospective bidders the penalty of suspension for five (5) years for the first offense, suspension for ten (10) years for the second offense from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as deemed necessary and may also institute further criminal prosecution, as provided by applicable laws.
- 15.24. The Municipality shall also not be precluded from invoking its conventional remedies in law.
- 15.25. The SCM: Manager shall advise the service provider of the decision in writing within ten (10) working days of the decision being made, by enclosing in the notice, a copy of the order which shall contain the following information:
- (i) The decision.
  - (ii) The effective date of the sanction, the date of them expiration of the sanction and the date of commencement of the tenderer into the public tender arena, which will be the next working day, if the expiry falls on weekend or South African public holiday.
  - (iii) The reasons for the decision.
  - (iv) The right of appeal against the decision and/or sanction.
- 15.26. The SCM: Manager shall advise the NT of the decision of the Municipality within ten (10) working days of any restrictions, period of restriction, reasons, and the date of commencement of the restriction that it imposes against the respondent.
- 15.27. The AO may, based on good reasons, amend, or uplift any restriction which is imposed on the contractor, if such restriction is only limited to the Municipality.
- 15.28. Application for the uplifting of the restriction must be made by the relevant service provider.
- 15.29. Such reasons for amendment or upliftment must be furnished to the NT within ten (10) working days of the amendment or upliftment.
- 15.30. An application for uplifting may only be made after the service provider has been suspended for at least a year from the effective date of the decision where the sanction is for three (3) or more years.

- 15.31. Furthermore, if an application is refused, the service provider shall be precluded from bringing a further application for a period of six (6) months from such refusal after obtaining a legal opinion on this course of action.
- 15.32. The onus shall rest with the service provider to ensure that he is removed from the restriction list once the period of restriction has expired.
- 15.33. The following figure graphically depicts the determination of liability of service providers process.

*Figure 9: Determination of liability in law of service providers process:*



## **PART 16: TREATMENT VIA CONDONATION**

- 16.1. The relevant authority means *“the person or institution whose approval would have been required prior to entering into that transaction or incurring such expenditure or the institution responsible for the relevant legislation.”*
- 16.2. In MFMA circular 68, the National Treasury (page 10) explained the condonation of irregular expenditure by the relevant authority as:
- (i) The NT for contravention of the MFMA and its Regulations.
  - (ii) COGTA for contravention of the MSA.
  - (iii) No provision for condonation of contravention of the Public Officer Bearers Act.
  - (iv) Council in the case of contravention of the Municipal SCM Policy, which is not also a contravention of the MFMA or its Regulations.
- 16.3. The AO or his/her delegate must forward submissions to the relevant authority to request condonation for non-compliance with the MFMA or any other legislation. Note: the submission must contain:
- (i) Detailed motivation as to why the irregular expenditure in question should be considered for condonation,
  - (ii) Remedial steps taken to avoid the reoccurrence of this type of irregular expenditure, and
  - (iii) May only be submitted where good reasons exist for condonation.
- 16.4. In instances where irregular expenditure is not condoned by the relevant authority the UIFW, immediate steps must be taken to recover the irregular expenditure from the relevant person if he/she is liable in law.

## **PART 17: TREATMENT VIA THE WRITING OFF AS IRRECOVERABLE**

- 17.1. Council has the mandate for the writing off of irregular expenditure as irrecoverable in terms of MFMA section 32(2)(b) which is further explained in the guidance regarding the mandates on Irregular Expenditure, provided in MFMA circular 68, from the National Treasury (page 10), as follows: *“With reference to (a) as defined, - 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 Act 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 its Regulations. Section 32(2)(b) of the MFMA provides the council only with the power to consider and resolve on the expenditure.**” [own emphasis]*

- 17.2. The AO or his/her delegate must forward submissions to the relevant MFMA s32 committee to request the writing off of UIFW as irrecoverable. **Note:** the submission must contain:
- (i) Detailed motivation as to why the irregular expenditure in question should be considered for condonation,
  - (ii) That the municipality did receive the service or goods,
  - (iii) That value for money was achieved,
  - (iv) That no person acted in 'mala fides' or personally benefitted himself/herself', and
  - (v) Remedial steps taken to avoid the reoccurrence of this type of irregular expenditure,
- 17.3. In instances where UIFW is not considered to be written off as irrecoverable by the MFMA s32 committee, immediate steps must be taken to recover the irregular expenditure from the relevant person, if he/she is liable in law and in the event that recovery still fails, the relevant 'debt write-off policy' of the Municipality will apply.

## **PART 18: TREATMENT VIA RATIFICATION**

- 18.1. SCM TR 36 (1)(b) allows the AO 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.
- 18.2. It is important to note that the AO can only rely on this provision if the official or committee who committed the breach had the delegated authority to perform the function in terms of the municipality's adopted System of Delegations, which must be consistent with the MFMA and its regulations. The process to deal with minor breaches of the SCM policy is guided by the National Treasury, as per MFMA Circular 68 of June 2019.
- 18.3. Note that once the AO condoned such a breach of process, the action cannot be classified as 'irregular expenditure', as is clearly provided for in the definition of 'irregular expenditure; in section 1 of the MFMA, as follows: "....*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**, ..*" [own emphasis]
- 18.4. In deciding whether a breach of procurement processes is minor or material, the National Treasury provide the following guidance in exercising this discretion:

- (i) 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?
  - (ii) the circumstance surrounding the breach: are the circumstances justifiable or, at least, excusable?
  - (iii) the intent of those responsible for the breach: *were they acting in good faith?*
  - (iv) the financial implication because of the breach: *what was the extent of the loss or benefit?*
- 18.5. All the factors above must be considered before the accounting officer exercises his or her discretion. The accounting officer would have to consider the merits of each breach of the procurement processes and take a decision as to whether it should be classified as a minor or material breach.
- 18.6. Whether the resultant expenditure will be irregular is dependent on when the minor breach was identified. If the minor breach was identified before the award of the tender, such instance should be dealt with purely as a non-compliance matter through the ratification of a minor breach process. There will be no irregular expenditure since no expenditure had 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.
- 18.7. Should the minor breach be detected after the award was made and expenditure had been incurred for services rendered, there will be non-compliance and the resultant expenditure, will be regarded as irregular. In this instance, the accounting officer may ratify the minor breach provided that the breach in question is not simultaneously also a breach of the SCM TR or the MFMA itself. The associated expenditure will have to be processed in terms of section 32(2)(b) of the MFMA. Note that the ratification of the minor breach by the accounting officer does not automatically regularise the expenditure as the legislative authority in this regard vests with the municipal council, after an investigation by a council committee. *Refer to MFMA Circular 92 and the MPAC guide and toolkit for assistance on the process to be followed to address the irregular expenditure.*
- 18.8. Note that this category only covers breaches of procurement processes in the municipality's SCM policy and not breaches of other legislation or regulations.
- 18.9. It is important to highlight that, in terms of the regulation 36 of the SCM TR's, only the AO can consider the ratification of minor breaches of procurement processes that are purely of a technical nature.



- 18.10. It is advisable that the accounting officer implement appropriate processes in the municipality's SCM policy to investigate the nature of the breach so that he/she can 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 SCM TR 36 (1) (b).
- 18.11. The MFMA and the SCM TR's do not specify what these processes should be, however, it is recommended that accounting officer investigate the nature of the breach through its Internal Audit Unit or any other investigation body and adopt corrective action as recommended by the Audit Committee.
- 18.12. The SCM TR 36(2) specifies a separate process for reporting the ratification of minor breaches to council, after they have been ratified by the accounting officer. 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.

#### **PART 19: TREATMENT VIA RECOVERY OF UIFW**

- 19.1. Recovery of any moneys due because of UIFW will be managed either via a civil claim through Legal Services or as provided for in the Office if the CFO as per its Debt Recovery Policy.

#### **PART 20: TREATMENT OF SCM ABUSE AND RESTRICTION OF SUPPLIERS**

- 20.1. This Part must be read and applied in conjunction with the determination of liability in law as per Part 15 above.
- 20.2. Once a service provider or supplier was found to be liable in law for fraud or SCM Abuse as per Part 15 above, the sanctions imposed by the Municipality will apply until duly lifted as provided and bidders will be restricted from submitting a tender.

#### **PART 21: REPORTING, MONITORING AND EVALUATION**

- 21.1. MFMA s32(4) provides the reporting requirements of the accounting officer to the Mayor, the MEC for local government in the province and the Auditor General.
- 21.2. MFMA s 32(6), provides that the AO must report to the South African Police Service all cases of alleged UIFW.
- 21.3. MFMA s 32(7), provides that the council of a municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service if—

- a) the charge is against the AO; or
- b) the AO fails to comply with that subsection.

21.4. The Office of the CFO/ CAE will execute its mandated compliance checks, which may consider the following elements:

SCM ABUSE COMPLIANCE CHECKLIST	REF	REMARK/ ACTION	REMEDIAL
<b>NOTIFICATION</b>			
1. The Municipality ensured that notification is available for use			
<b>REGISTRATION</b>			
2. Reported case was registered and case file opened			
3. Investigator was appointed and mandated			
4. Declaration was complete			
5. Classification was correctly applied			
6. Preliminary investigation was concluded			
7. Management decision re validity of claim was recorded			
8. If no valid case was determined – file appropriately closed			
<b>INVESTIGATION</b>			
9. Investigation was executed as prescribed			
10. Case file logbook was maintained			
11. Submissions were reviewed prior to submission			
12. Appropriate notifications and reporting were done			
13. Register was updated			
<b>TREATMENT</b>			
14. Treatment actions are executed			
15. Case file logbook was maintained			
16. Control weaknesses was identified and recorded in control register			
17. Training opportunities were identified and planned			
18. Recovery activities are recorded and executed			
19. Condonation/write-off submissions were submitted			
20. Disciplinary action was executed			
21. Service provider restriction process followed as prescribed			
<b>MONITORING AND EVALUATION</b>			
22. Statistics are analysed			
23. Report submitted to PRM Steercom			
24. Annual Reporting done			
<b>OTHER</b>			
25.			
26.			

## PART 22: FORM CONTROL

22.1. The Office of the CFO must maintain Form Control over the relevant forms and templates and capture same in the Form Register and on the Municipal Collaborator System.

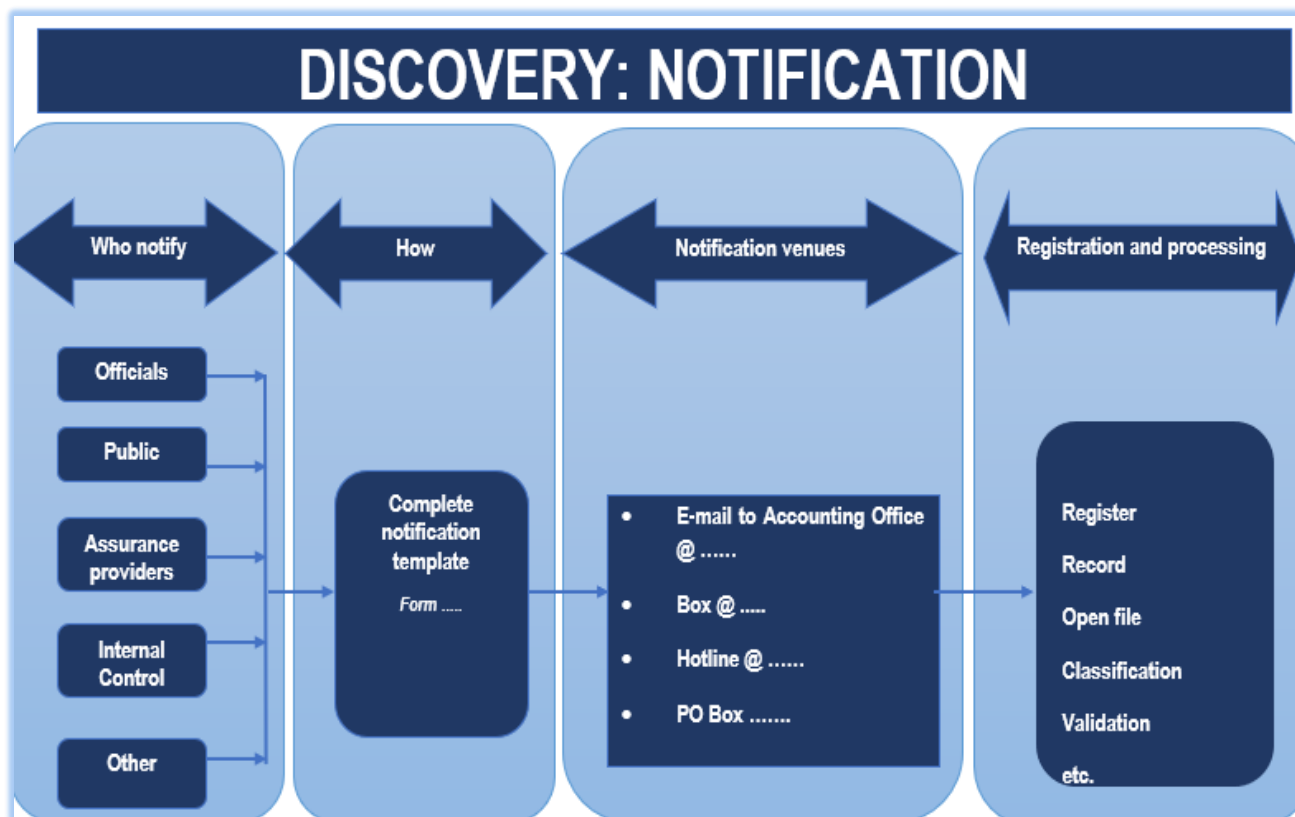
22.2. The forms/templates referred to in this SOP can be accessed at the Office of the CFO.

**PART 23: STANDARD OPERATING PROCEDURE**

23.1. The Office of the CFO will maintain a Consequence Management Standard Operating Procedure [SOP], which will be attached to this document marked KCM 001/20.

**M 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
<b>NOTIFICATION AND RECORDING - READ WITH PARTS 8 AND 10</b>					



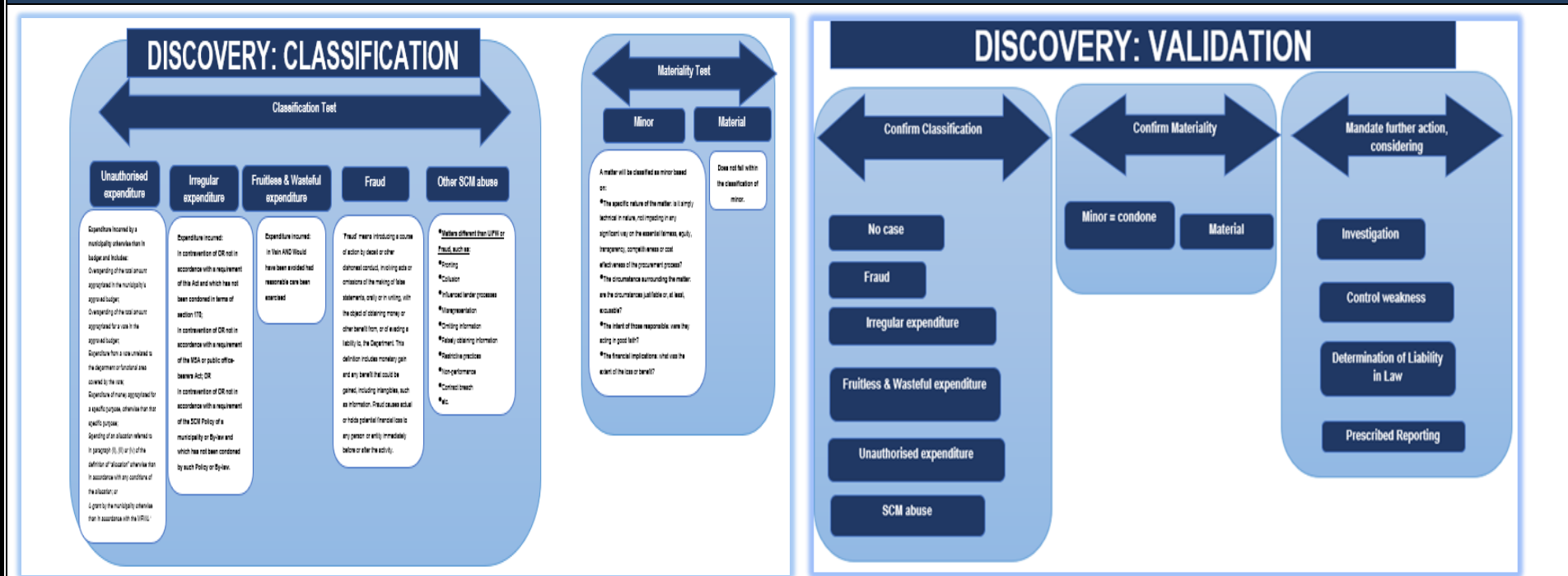
1.	Notification	Complete Notification Form	Form ...	To AO or designated official.  If AO or senior manager is implied to the Mayor, NT and PT	Immediately on discovery	(i) Refer to the FM-Regulations 3(1) in instances where the notification must be made to the Council, the PT and NT in matters alleging the AO, CFO or Senior Manager (ii) Any member of the public, official, service provider or assurance provider
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**M 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
				<p>If political office bearer is implied to the designated official, Minister and MEC for finance.</p> <p>If the Speaker is implied to the Mayor.</p>		<p>may make a notification.</p> <p>(iii) Persons who notify the matter must ignore the 'official use' part.</p> <p>(iv) Persons may remain anonymous.</p> <p>(v) Notification may also occur during various assurance processes, i.e. internal audit, external audit, compilation of the annual financial statements or normal inspections.</p> <p>(vi) The same principles guiding 'whistle blowing' will apply, i.e. protection of the identity of the reporter and complete compliance with just administrative actions.</p> <p>(vii) Maintain confidentiality of process and matter.</p>
2.	Receipt of Notification Form ('official use')	<p>(i) Complete 'official use' column of the Notification Form</p> <p>(ii) Cross reference supporting documents.</p>	Form ...	AO/Delegated official  EM if AO or Senior Manager is implied	Within 2 days	Record if no supporting documents are received, record.
3.	Registration of matter	Complete Master Register	Form ...	AO/Delegated authority		<p>(i) The Master Register must be available for inspection and audit purposes.</p> <p>(ii) The Master Register must be kept in a safe place and protected against fire and water damage.</p>
4.	Open case file	<p>(i) Obtain official file plan number and folder</p> <p>(ii) Complete and affix cover page</p> <p>(iii) Complete and affix checklist on the inside of the folder</p>	Form ...	Investigating official or designated		<p>(i) Comply with registry and archive requirements.</p> <p>(ii) This manual procedure may be adapted once an electronic document management system is implemented.</p>

# CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
CLASSIFICATION AND MATERIALITY DETERMINATION – READ WITH PART 11					



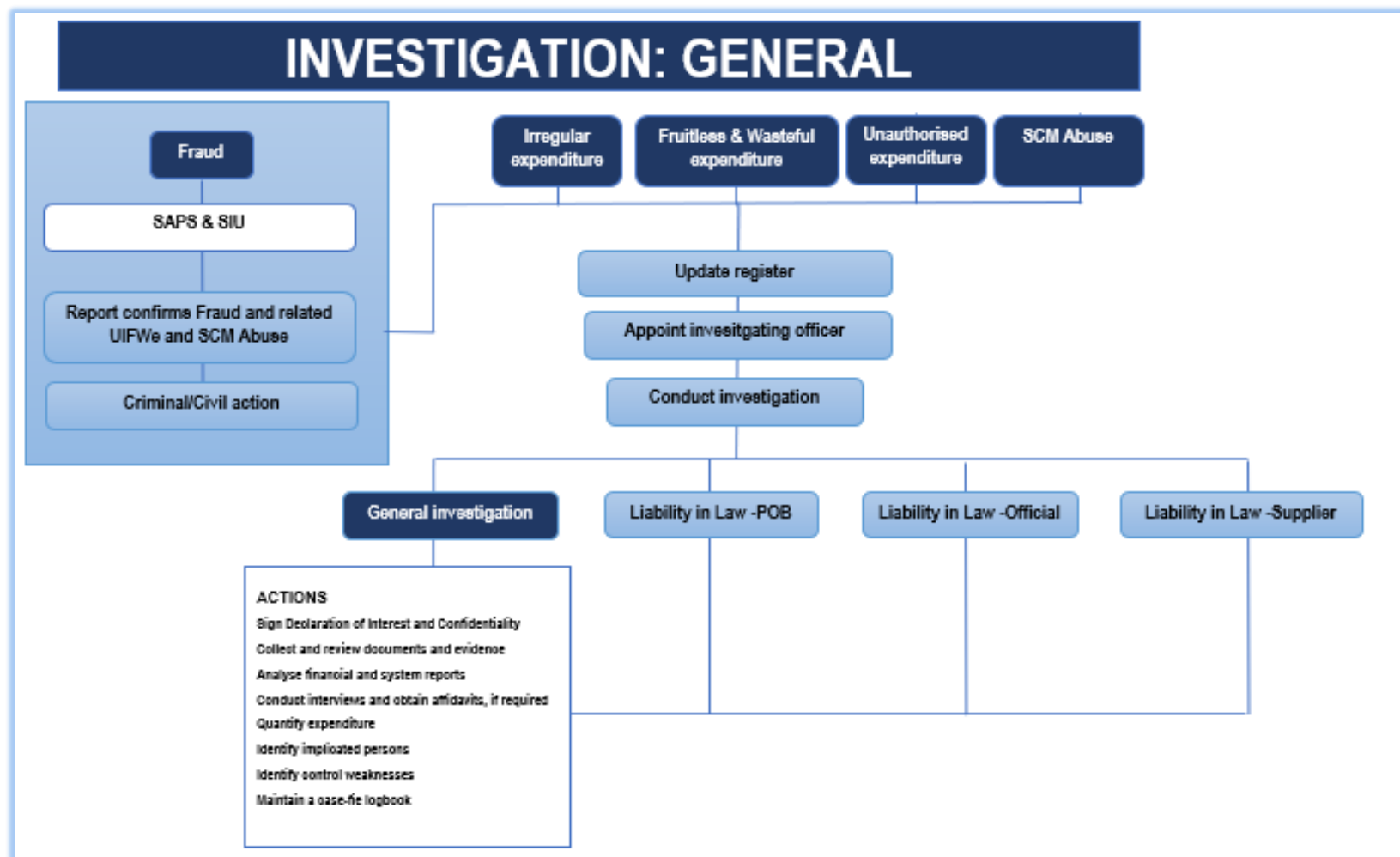
5.	Make preliminary recommendations on the viability of the allegation	Examine allegation based on information at face-value: (i) Verify documents (ii) Analyse system reports (iii) Quantify expenditure (iv) Conduct preliminary interviews (v) Complete Classification Form. (vi) Complete materiality Form.	Form ...	Designated person	Within 4 days	(i) Draw relevant system reports (ii) Permit Investigators to access information on relevant systems (iii) Recommendation must be directed to the ###, and if implied to the ###
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**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		(vii) Complete pre-lim Management Decision Form				
6.	Make management decision on the viability of the alleged IFW	Consider evidence and make preliminary decision on validity/merits of case and conclude matter or mandate a formal investigation	Form ...	To AO if official is implied.  To Mayor if AO or senior manager is implied	Within 1 day	<b>Report to include:</b> i. Background to the occurrence. ii. The root causes. iii. The employee(s) and/or service providers responsible/implied iv. Financial implications. v. Whether the Municipality suffered a loss. vi. Any breakdown in the designed internal controls. vii. Steps taken to prevent or rectify these internal control deficiencies. viii. Recoverability of the amount.
7.	Update relevant register based on management decision	Update register details	Form ...	Investigating official	Immediately	
8.	Inform SAPS	If there is likelihood of further financial loss, the AO or Council must report matter to SAPS, without awaiting completion of FM-Regulations 5 & 6		Manager: HRM	Immediately	(i) As per FMR 10(2), if there is a likelihood of further financial loss for a municipality as a result of a financial offence, the accounting officer must report the matter without delay to the South African Police Service and not await the completion of any investigation referred to in regulations 5 and 6 related to the financial offence. (ii) File must be consulted with CFO, Legal Services and SCM and signed off by AO

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
<b>INVESTIGATION PROCESS WHERE NO POLITICAL OFFICE BEARER, OFFICIAL OR SERVICE PROVIDER ARE IMPLIED OR GENERAL INVESTIGATION PROCESS</b>					



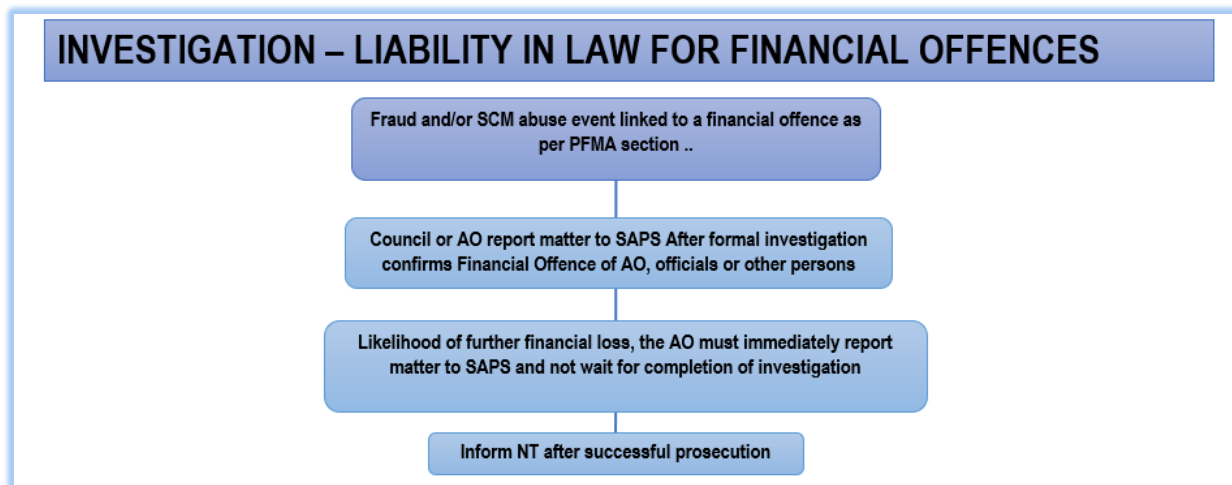


**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
INVESTIGATION PROCESS WHERE NO POLITICAL OFFICE BEARER, OFFICIAL OR SERVICE PROVIDER ARE IMPLIED OR GENERAL INVESTIGATION PROCESS					
9.	Conduct formal investigation	(i) Conduct interviews (ii) Obtaining affidavits where relevant (iii) Examine relevant documents (iv) Investigate systems applied, etc. (v) Analyse system reports (vi) Quantify expenditure (vii) Consider Prescription rules (viii) Maintain case file logbook	Form ...	Investigating official/Delegated authority/External Investigator	Within 30-days  (i) For sound record purposes: a. Record all affidavits collected as Aff 1.1; 1. 2... b. Record all documentation collected as Doc 1.1,1. 2... (ii) The CFO must be informed of progress monthly to maintain the IYM reports.
10.	Compile draft report and case file	(i) Present findings (ii) Make final recommendations	Form ...	Investigating official	Within 21 days  Together with the draft Report it is important that the complete file be compiled in the format of a case file
11.	Conduct an independent review of draft report and case file	Appoint independent reviewer in writing to conduct file review and submit review certificate	Form ...	CFO Office	Determine duration per case file  Independent reviewer may be a senior official or an official in another component or if a material/significant matter an independent assurance provider
12.	Execute Review certificate findings	Complete Review Certificate	Form ...	Reviewer	Within 7 days  Reviewer may require for file to be reviewed again, or advise that matters be clarified/executed, and file processed
13.	Compile final investigation report	(i) Compile final Report (ii) Compile final case file (iii) Submit to delegated authority	Form ...	Investigating official	Within 7 days  Report must be managed via the office of the investigating official.

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
<b>INVESTIGATION PROCESS IN THE EVENT OF CONFIRMED FRAUD – READ WITH PART 12</b>					

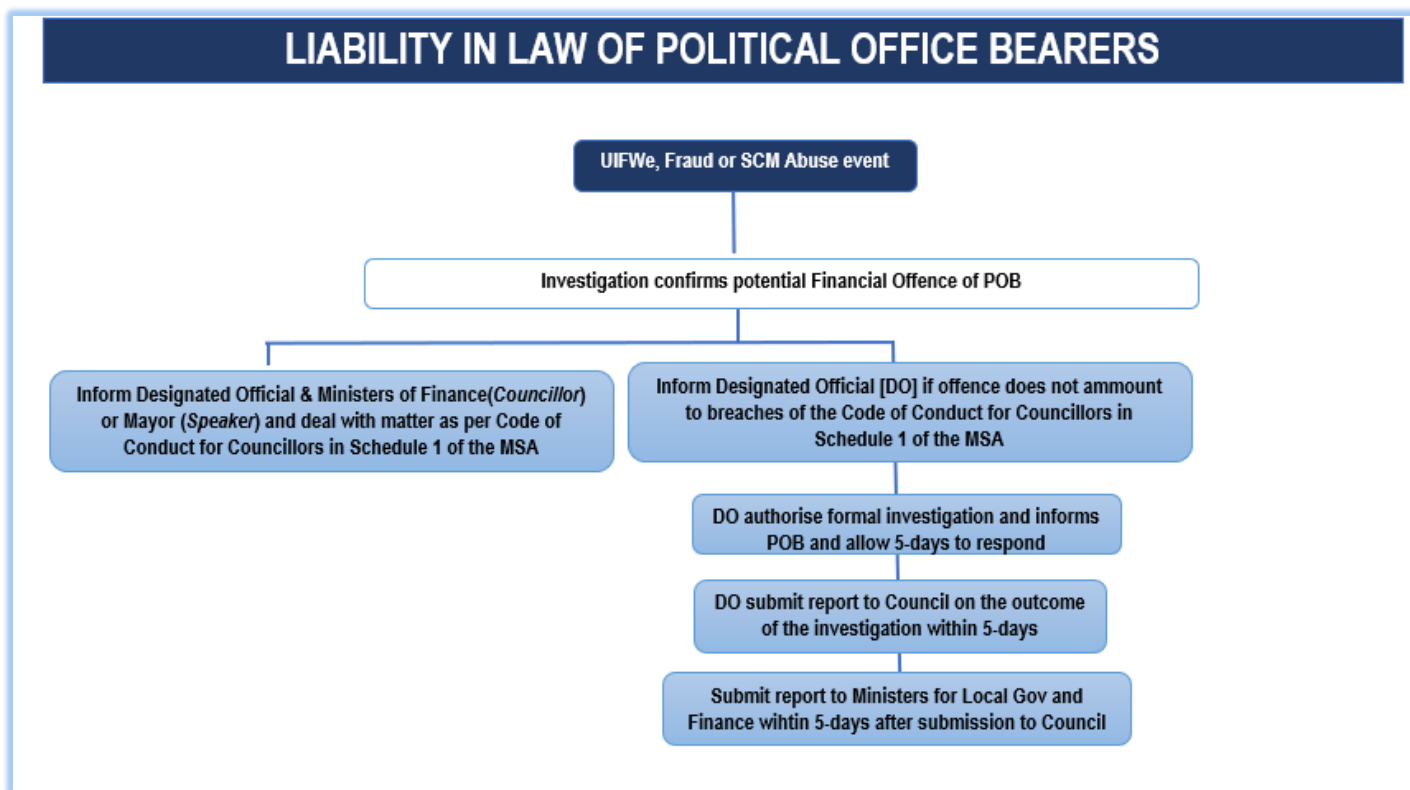


14.	Management of a confirmed <b>'fraudulent activity'</b>	Refer matter to SAPS/FI for investigation and recommendations on further actions.	Form ...	Investigating official/Delegated authority	Within 7-days	(i) The CFO must be informed of progress monthly to maintain the IYM reports. (ii) Refer to the FM-Regulations about officials, especially regulations 3(4) and 10. (iii) As per FMR 10(3), where a financial offence is successfully prosecuted, the judgment must be reported to the National Treasury, together with full details of the convicted person, the name of the municipality where the offence was committed and the sanction that was imposed.
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**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
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## LIABILITY IN LAW WHERE A POLITICAL OFFICE BEARER IS IMPLIED – READ WITH PART 13



15.	Inform implied Councillor	Provide Councillor with notification of allegation and allow him/her to provide reasons why he/she should not be suspended	Form ...	Designated official	Within 5 days	(i) As per FMR 9(2), if an allegation is against a councillor or the Speaker, it must be dealt with in terms of the Code of Conduct for Councillors in Schedule 1 to the Municipal Systems Act.
16.	Prepare initial report with	Examine alleged financial offence based on information		Designated official	Within 5 days	(i) Draw relevant system reports (ii) Permit Investigators to access

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

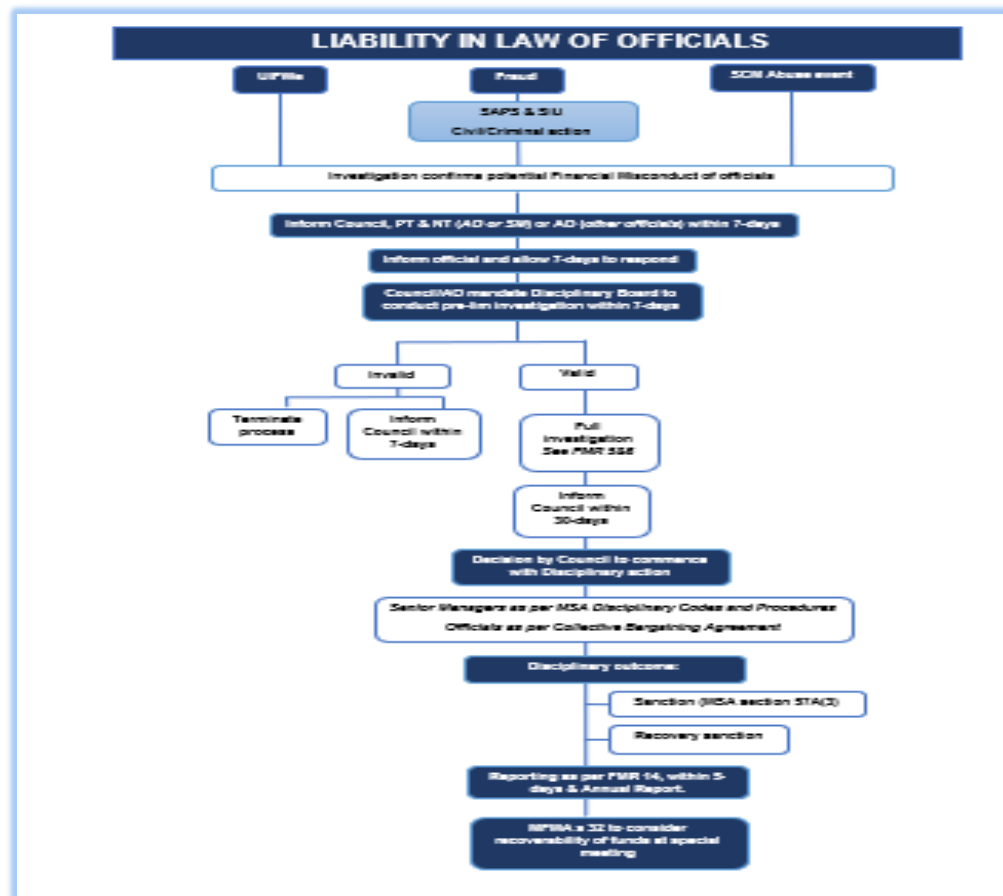
PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
	recommendations on the viability of the alleged incidence	<i>at face-value:</i> (i) Verify documents (ii) Analyse system reports (iii) Quantify expenditure (iv) Conduct preliminary interviews (v) Complete Classification Form. (iv) Complete Management Decision Form				information on relevant systems (iii) Recommendation must be directed to the Manager: HRM
17.	Make management decision on the viability of the alleged incidence	Consider evidence and make preliminary decision on validity/merits of case and authorise formal investigation		Designated official	Within 5 days	(i) Refer to FMR 11. (ii) Refer to FM-Regulations 14 & 15 with regards to the format and tabling of the report, as well as recipients.
18.	Update relevant register based on management decision.	Update register details	Form ...	Designated official	Within 1 day	
19.	Conduct formal investigation	(i) Conduct interviews (ii) Obtaining affidavits where relevant (iii) Examine relevant documents (iv) Investigate systems applied, etc. (v) Analyse system reports (vi) Quantify expenditure (vii) Consider Prescription rules (v) Maintain case file logbook	Form ...	Investigating official/Delegated authority/External Investigator	Within 5 days	(i) For sound record purposes: a. Record all affidavits collected as Aff 1.1; 1. 2... b. Record all documentation collected as Doc 1.1,1. 2... (ii) The CFO must be informed of progress monthly to maintain the IYM reports.
20.	Compile draft report and case file	(i) Present findings (ii) Make final recommendations	Form ...	Designated official		Together with the draft Report it is important that the complete file be compiled in the format of a case file
21.	Resolve on matter	(i) Examine evidence in case file	Form ...	Council	Within 1 day	

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		(ii) Consider evidence in case file (iii) Make final discovery (vi) Issue further directives, inclusive of directives in relation to Financial Misconduct.				
22.	Record final resolution	(i) Update relevant register and case file	Form ...	Designated official	Within 3-days	
23.	Implement resolution	<p>Execute actions relevant to:</p> <ul style="list-style-type: none"> <li>• Policy changes</li> <li>• Procedure changes</li> <li>• Delegation changes</li> <li>• Capacity improvements (training and/or communication actions)</li> <li>• Financial management implications</li> <li>• Control treatment</li> <li>• Accounting treatment</li> <li>• Liability in law: <ul style="list-style-type: none"> <li>➢ Recovery</li> <li>➢ Write-off</li> <li>➢ Civil action and/or restriction</li> </ul> </li> <li>• Condonation</li> </ul> <p>(ii)</p>	Form ...	Investigating official	Within 30-days	In the determination of 'liability in law' refer to discussions and processes discussed below.
24.	Compile control register	Maintain control register	Form ...	Designated official	Continuous	The data collected in the control register will support reporting to the relevant oversight bodies
25.	Reporting	Inform stakeholders as per FMR 11(4)		Designated official	Within 5 days	Refer to FM-Regulations 14 & 15 with regards to the format and tabling of the report, as well as recipients.

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
<b>LIABILITY IN LAW WHERE AN OFFICIAL IS IMPLIED – READ WITH PART 14</b>					



26.	Inform official implied	Provide Official with notification of allegation and allow him/her to provide reasons why he/she should	Form ...	Designated official	Within 7 days	As per FMR 3(5) for financial misconduct
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**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		not be suspended				
27.	Prepare initial report with recommendations on the viability of the alleged incidence	Examine allegation based on information <i>at face-value</i> : (vi) Verify documents (vii) Analyse system reports (viii) Quantify expenditure (ix) Conduct preliminary interviews (x) Complete Classification Form. (iii) Complete Management Decision Form		Designated official	Within 7 days	(i) Draw relevant system reports (ii) Permit Investigators to access information on relevant systems
28.	Make management decision on the viability of the alleged incidence	Consider evidence and make preliminary decision on validity/ merits of case and authorise formal investigation via disciplinary board		Council		
29.	Update relevant register based on management decision.	Update register details	<i>Form ...</i>	Designated official	Within 1 day	
30.	Determine terms of reference	Develop terms of reference for investigation		Manager: HRM	Within 7-days	(i) Refer to investigator/ investigation team appointment process, especially if it is someone different than the Disciplinary Board (FM-Regulations 5(4) – (6)). (ii) Terms of Reference must be consulted with CFO, Legal Services and SCM and signed off by AO
31.	Conduct formal investigation	(i) Conduct interviews. (ii) Obtain affidavits where relevant (iii) Examine relevant documents (iv) Investigate systems		Appointed investigator	Within 30-days  Updated on a weekly basis Monthly review	(i) For sound record purposes: a. Record all affidavits collected as Aff 1... b. Record all documentation collected as Doc 2... (ii) The Manager: Legal Services and

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		applied, etc. (v) Maintain case file logbook (vi) Review progress report				SCM must be informed of progress on a monthly basis in order to maintain the IYM reports.
32.	Compile final report and case file	(i) Present findings (ii) Make final recommendations, inclusive of disciplinary steps		Investigating official	Within 30-days	(i) Refer to FM-Regulations 6(3)(a) (ii) Together with the Report it is important that the complete file be compiled in the format of a case file
33.	Submit report	(i) Submit report to Mayor (ii) Inform Speaker (iii) Submit copies to PT and NT		Investigating official via Disciplinary Board	At next sitting or special meeting	(i) Refer to FM-Regulations 6(3)(b)-(c). (ii) As per FM-Regulations 6(4), the report must be tabled at next sitting Council. (iii) Any amendments to initial report must be supported by motivation (FM-Regulations 6(5)). (iv) Refer to FM-Regulations 14 & 15 with regards to the format and tabling of the report as well as recipients.
34.	Make final resolution	Council to consider report and evidence and make final resolution as per FM-Regulations 6(8)		Council	Within 5-days	(i) Reasons must be provided to investigator why recommendations are rejected – FM-Regulations 6(6) (ii) If disciplinary recommendations are not implemented, the Investigator must refer matter to PT or NT for investigation – FM-Regulations 6(7).
35.	Record final resolution	(iv) Update relevant register and case file	Form ...	Designated official	Within 3-days	
36.	Implement resolution	Execute actions relevant to: • Policy changes • Procedure changes • Delegation changes	Form ...	Investigating official	Within 30-days	In the determination of 'liability in law' refer to discussions and processes discussed below.

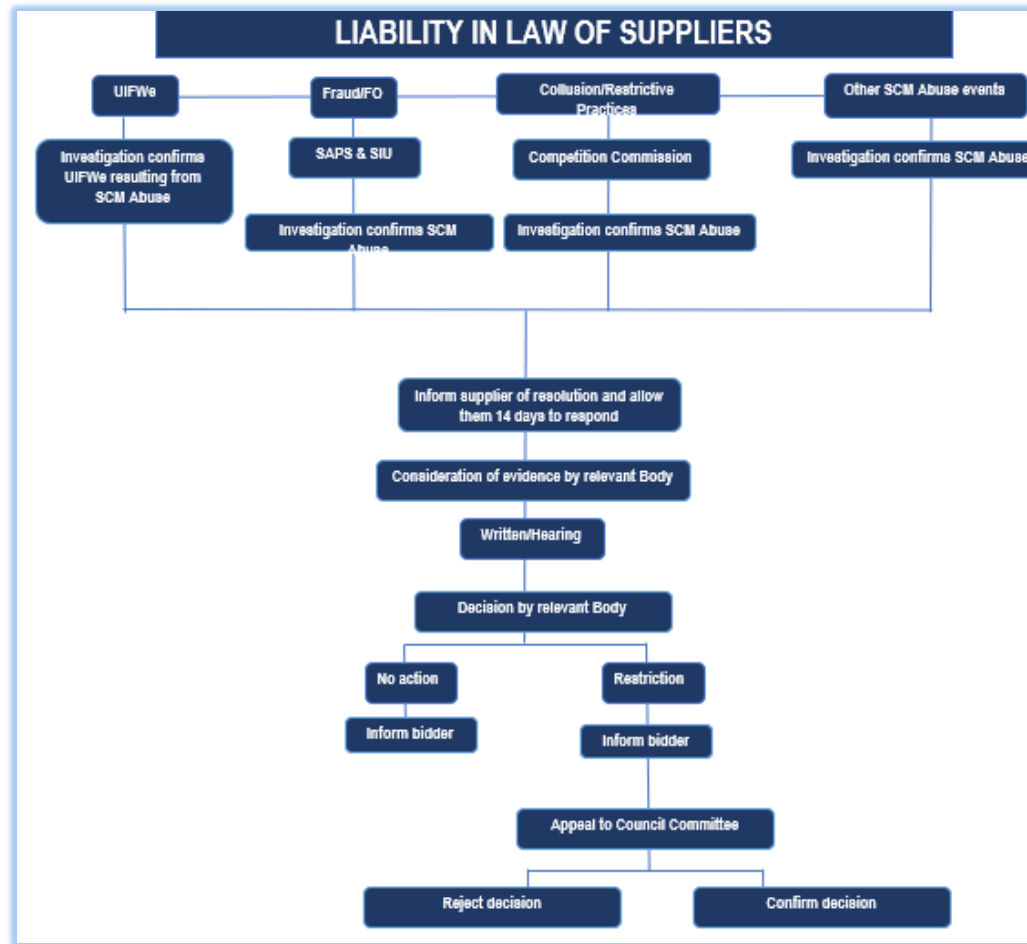


**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		<ul style="list-style-type: none"> <li>Capacity improvements (training and/or communication actions)</li> <li>Financial management implications</li> <li>Control treatment</li> <li>Accounting treatment</li> <li>Liability in law: <ul style="list-style-type: none"> <li>➤ Recovery</li> <li>➤ Write-off</li> <li>➤ Civil action and/or restriction</li> </ul> </li> <li>Condonation</li> </ul>				
37.	Compile control register	Maintain control register	Form ...	Designated official	Continuous	The data collected in the control register will support reporting to the relevant oversight bodies
38.	<i>Conduct disciplinary process</i>	In the case of Municipal Officials as per Collective Agreement concluded on 21 April 2010		HRM	As agreed	(i) Consult Municipal Disciplinary code and processes. (ii) The Manager: Legal Services and SCM must be informed of progress on a monthly basis in order to maintain the IYM reports.
39.		In the case of Senior Managers as per Disciplinary Regulations were issued in terms of the Municipal Systems Act, 2000 (Act 32 of 2000), via Government Gazette Notice 34213, no. 344 of 21 April 2011.		Delegated authority	As prescribed	(i) Consult Municipal Disciplinary code and processes. (ii) The Manager: Legal Services and SCM must be informed of progress monthly in order to maintain the IYM reports.
40.	Compile final report and case file	(i) Present findings (ii) Make final recommendations,		Investigating official	Within 5-days after finalisation	Refer to FM-Regulations 14 & 15 with regards to the format and tabling of the report as well as recipients.

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
	inclusive of disciplinary steps				
41.	Affect prescribed reporting within AFS	As per NT guidelines	As prescribed	Manager: HRM	As prescribed
					Refer to the NT annual guidelines to the compilation of AFS



**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
42.	Make recommendations on the viability of the alleged SCM system abuse case	Examine alleged SCM system abuse based on information <i>at face-value</i> : (i) Verify documents (ii) Analyse system reports (iii) Quantify expenditure (iv) Conduct preliminary interviews (v) Complete Classification Form. (vi) Complete Management Decision Form	SA007	Investigating official	Within 21 days	(i) Draw relevant system reports (ii) Permit Investigators to access information on relevant systems (iii) Recommendation must be directed to the Manager: SCM (iv) and if the SCM Manager is implied to the CFO/AO
43.	Make management decision on the viability of the alleged SCM system abuse case	Consider evidence and make preliminary decision on validity/ merits of case: <ul style="list-style-type: none"> <li>• If found to be possible fraud, refer to Forensic investigator/ SAPS</li> <li>• If possible UIFWe, refer to CFO</li> <li>• If uncertain – refer to relevant Authority for advice</li> <li>• If <i>bona fide</i> system abuse, address control or capacity weakness, treat control weakness</li> <li>• If restriction is required, refer to SCM Manager</li> </ul> (vi) Direct further actions		Manager: Legal Services	Within 7 days	Follow-up case files referred on a weekly basis
44.	Update relevant register based on management decision.	Update register details		Manager: Legal Services		
45.	Inform implied service provider	Provide service provider with notification of allegation and allow him/her to provide	Form ...	Designated official	Within 14 days	Refer to Part 15 re format of communication

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		reasons why he/she should not be restricted				
46.	Conduct investigation to determine liability event to qualify to be <b>'restricted (black-listed)'</b>	Refer to processes as described in Part 15 below.		Investigating official/Delegated authority	Within 30-days	(i) For sound record purposes: a. Record all affidavits collected as Aff 1.1; 1. 2... b. Record all documentation collected as Doc 1.1,1. 2... (ii) The Manager: SCM must be informed of progress monthly in order to maintain the IYM reports. (iii) Also refer to Part 15.5 – 15.7 below regarding investigative activities.
47.	Resolve on matter	(i) Examine evidence in case file (ii) Consider evidence in case file (iii) Make final <i>discovery</i> (iv) Issue further directives.		Relevant Authority	Within 10-days	(i) Relevant Authority to make recommendation to Municipal Council. (ii) Refer to Part 15 regarding considerations and related adjudication matters.
48.	Record final resolution	Update relevant register and case file		Investigating official	Within 3-days	
49.	Implement resolution	Execute actions relevant to: <ul style="list-style-type: none"> <li>• SCM Policy changes</li> <li>• SCM Procedure changes</li> <li>• SCM Delegation changes</li> <li>• SCM Capacity improvements (<i>training and/or communication actions</i>)</li> <li>• Financial management implications</li> <li>• SCM Control treatment</li> <li>• Accounting treatment</li> <li>• Liability in law: <ul style="list-style-type: none"> <li>➤ Recovery</li> </ul> </li> </ul>		Investigating official	Within 30-days	In the determination of 'liability in law' refer to discussions and processes as per Part 13 below.

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
		<ul style="list-style-type: none"> <li>➤ Write-off</li> <li>➤ Civil action and/or restriction</li> <li>• Condonation</li> </ul> (vii)				
50.	Compile control register	Maintain control register	SA014	Investigating official	Continuous	The data collected in the control register will support reporting to the relevant oversight bodies

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE	ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS	
TREATMENT THROUGH RECOVERY						
<div><div>RECOVERY</div><div>Investigation confirmed liability in law (POB/Official/Supplier)</div><div>Resolution by Authority</div><div>Commence Recovery</div><div>Raise Debtor Debt recovery/write-off Policy</div></div>						
51.	Inform of outcome	Inform CFO of outcome	NA	Head: Corporate Services	Within 48-hours	The CFO must put measures in place to transfer the expense to a debtors account, and commence with collection mechanisms at his/her disposal, to recover the money due from the person liable
52.	Recovery process	(i) Issue and monitor recovery letter/letter of demand (ii) If recovery is not successful, motivate for write-off (iii) Inform Manager: Financial Accounting to effect write-off if approved.	Form ...	Investigating official/ Delegated authority	Within 90-days	(i) Letter must be endorsed by AO (ii) In the recovery of IFW from an official, refer to discussions and processes below. (iii) In this regard, write-off is done as per the Municipal debt-write-off Policy.

**CM 001/20: BELOW CONTAINS THE PROCESSES AND PROCEDURES RELEVANT IN CONSEQUENCE MANAGEMENT**

PROCEDURE		ACTION	TEMPLATE REFERENCE	RESPONSIBILITY	SERVICE STANDARD	REMARKS
<b>MONITORING, EVALUATION AND GENERAL REPORTING</b>						
53.	Maintain and analyse statistics	(i) Maintain a matrix of SCM System Abuse database and control register (ii) Analyse information (iii) Present risks and remedial action to: <ul style="list-style-type: none"> <li>Top Management</li> <li>Audit Committee</li> <li>MPAC</li> </ul>	Form ...	Investigating official	Quarterly	This matrix will allow the recording of trends, such as identified risk areas, significant control weakness areas and pockets/areas of non-compliance. These trends and its analysis will assist management in taking action to improve financial governance
54.	Annual Report (AFS)	Submit inputs to CFO	Form ...	Investigating official	Annually or as prescribed	Align with prescribed AFS reporting template
55.	Dedicated reports	Report to: <ul style="list-style-type: none"> <li>AO and mayor</li> <li>CFO</li> <li>Internal Audit</li> <li>MEC: DPLG/ AGSA/PT</li> <li>Forensic investigators/SAPS</li> <li>Relevant Committee</li> </ul>	Form ...	Investigating official	<ul style="list-style-type: none"> <li>Monthly</li> <li>Mgt Decision</li> <li>At closure</li> <li>As prescribed</li> <li>As prescribed</li> <li>Ad hoc/ Quarterly</li> </ul>	Investigating official prepare reports and submit via Head; Legal Services, CFO, and relevant line function to AO.
<b>CLOSURE OF FILES</b>						
56.	Complete checklist	(i) Review and complete file as per checklist. (ii) Review checklist and sign off on it.	Form ...	Investigating official CFO Office	Monthly Monthly	
57.	Close file	(i) Submit file and filing requirement instruction to Registry (ii) Record disposal duration on the cover of the file.	Form ...	Investigating official Filing official	When completed	Comply with archive requirements