

UNAUTHORISED, IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE



POLICY, PROCESSES & PROCEDURES

RECOMMENDED

THAT the **Unauthorised, Irregular, Fruitless and Wasteful Expenditure Policy** and the contents thereof be tabled at the Mayoral Committee for recommendation for approval by Council.

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	INTERNAL AUDITOR	
Supported By	_____	Date: _____
	CHIEF FINANCIAL OFFICER	
Signature	_____	Date: _____
	MUNICIPAL MANAGER	
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1. Introduction

This document set out the Sedibeng District Municipality 's policy on the process of **identification, recording and disclosure of irregular, fruitless and wasteful, and unauthorised expenditure** in terms of section 62(d) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003). The aim of the policy is to ensure effective, efficient and transparent systems of financial and risk management and internal control.

The Accounting Officer is responsible for managing the financial affairs of the municipality and for this purpose, he/she must:

- 1.1. Take all reasonable steps to ensure that:
 - 1.1.1. Unauthorised;
 - 1.1.2. Irregular;
 - 1.1.3. Fruitless and wasteful expenditure; and
 - 1.1.4. Other losses are prevented; and
- 1.2. Ensure that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offense in terms of Chapter 15 of the Act.

2. Legislative Framework

- 2.1. The Municipal Finance Management Act, 2003 (Act 56 of 2003);
- 2.2. The Municipal Systems Act, 2000 (Act 32 of 2000);
- 2.3. The Public Office Bearers Act, 1998 (Act No. 20 of 1998);
- 2.4. Municipal Budget and Reporting Regulations;
- 2.5. The Municipal Supply Chain Management Policy and any by-laws giving effect to that policy;
and
- 2.6. The Municipal Finance Management Act, Circular 68.

3. Definitions

In this policy, any word or expression to which a meaning has been assigned in the Municipal Finance Management Act, 2003 (Act 56 of 2003) bears that meaning assigned to it and, unless the context indicates otherwise.

3.1 “Irregular expenditure”,

Irregular expenditure in relation to a municipality, means-

- a) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Act, and has not been condoned in terms of section 170;
- b) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of Municipal Systems Act, and which has not been condoned in terms of that Act;
- c) Expenditure by the municipality in contravention of, or which is not in accordance with a requirement of the Public Officers-Bearers Act, 1998 (Act No. 20 of 1998);
- d) Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the **supply chain management policy** of the municipality or any municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”.

3.2 “Fruitless and wasteful expenditure”,

Means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

3.3 The Act

Means the Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

3.4 “Unauthorised expenditure”

Unauthorised expenditure in relation to a municipality, means the expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes-

- a) Overspending of the total amount appropriated in the municipality’s approved budget;
- b) Overspending of the total amount appropriated for a vote in the approved budget;
- c) Expenditure from a vote unrelated to the department or functional area covered by the vote;
- d) Expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- e) Spending of an allocation referred to in paragraph (b), (c), or (d) of the definition of “allocation” otherwise than in accordance with any conditions of the allocation; or
- f) A grant by the municipality otherwise than in accordance with the Act.

3.5 A ‘vote’

Means one of the main segments into which the budget of a municipality is divided for the appropriation of money for the different departments or functional areas of the municipality and which specifies the total amount that is appropriated for the purposes of the department or functional area concerned.

4. Purpose and scope

The purpose of this policy is to:

- 4.1. Provide clarity on relevant legislation and regulations applicable to irregular, fruitless and wasteful, and unauthorised expenditure;
- 4.2. Enhance the awareness of officials of the municipality to prevent and detect irregular, fruitless and wasteful, and unauthorised expenditure;
- 4.3. Enhance correct reporting, investigation, identification and management of irregular, fruitless and wasteful, and unauthorised expenditure; and

- 4.4. Strengthen the internal control environment with regard to management of irregular, fruitless and wasteful, and unauthorised expenditure.

This policy is applicable to all officials of the municipality.

5. Unauthorised expenditure

- 5.1. The following are examples of unauthorised expenditure:

- 5.1.1. Overspending on budget;

- 5.1.2. Earmarked funds used for other purposes; and

- 5.1.3. Funds used outside the mandate of the department.

- 5.2. 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.

- 5.3. With reference to MFMA section 1(c) – funds appropriated in a vote for a department may not be used for purposes unrelated to the functions of that department. The Accounting Officer or other official may not use funds allocated to one department for purposes of another department or for purposes that are not provided for in the budget. *Where a Council has approved a virement policy, shifts made in accordance with that policy may be allowed, and must be taken into account when reviewing such expenditure.*

- 5.4. With reference to MFMA section 1(d) – in addition to appropriating funds for a department's vote, the Council may also appropriate funds for a specific purpose within a department's vote. Funds that have been designated for a specific purpose or project may not be used for any other purpose.

- 5.5. 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 the 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.

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

5.7. Valid expenditure decisions can only be made by Council in terms of a budget or an adjustment budget. Only Council may authorise instances of unauthorised expenditure and Council must do so through an adjustment budget.

5.8. Expenditures that are NOT classified as unauthorised expenditure:

5.8.1. Any over-collection on the revenue side of the budget as this is not an expenditure;
and

5.8.2. Any expenditure incurred in respect of:

5.8.2.1. Any transactions mentioned in section 11(1)(a) to (j) of the MFMA;

5.8.2.2. Re-allocation of funds and the use of such funds in accordance with a Council approved virement policy;

5.8.2.3. Overspending of an amount allocated by standard classification on the main budget Table A2 (Budget 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 (Budget Financial Performance: revenue and expenditure by municipal vote) and Table A4 (Budget Financial Performance: revenue and expenditure (read in conjunction with supporting Table SA1) of the MBRR; and

5.8.2.4. Overspending of an amount allocated by standard classification on the main budget Table A5 (Budget Capital Expenditure by vote, standard classification and funding) of the MBRR as long as it does not result in overspending of a 'vote' on the main budget Table A5.

6. Irregular expenditure

6.1. The following are examples of irregular expenditure:

- 6.1.1. Purchases exceeding thresholds;
- 6.1.2. Procuring without inviting the competitive bids;
- 6.1.3. Non-compliance with delegations of authority; and
- 6.1.4. Non-compliance with legislation.

6.2. For the purposes of determining whether irregular expenditure has taken place, there must be a transgression of a provision contained in applicable legislation, or any approved internal policy, procedures and instructions that have been issued by the municipality.

6.3. For the municipality to incur irregular expenditure, the non-compliance must be linked to a financial transaction. Although a transaction or an event may trigger irregular expenditure, an institution will usually identify irregular expenditure only when a payment is made. In an instance where irregular expenditure is determined prior to a payment being made, the transgression shall be regarded as a non-compliant matter.

6.4. Non-compliance with the Act or other relevant legislation shall not necessarily be regarded as irregular expenditure, unless the expenditure, i.e. the actual payments, related to such non-compliance is inconsistent with any prescripts of the legislation.

6.5. Expenditure resulting from non-adherence to the department's delegations of authority is regarded as irregular expenditure since such delegations are issued in terms of section of the Act.

6.6. The municipality's Irregular Expenditure Register must be updated throughout the process until the case is finally closed (find attached a copy of a template for a Register, labelled **Annexure A**).

6.7.

7. Condonation of irregular expenditure

7.1. 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, based on the findings of an investigation.

7.2. 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. The municipal Council therefore has no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of its regulations.

7.3. There is no provision in the MSA that allows for contravention of the Act to be condoned. Should the 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.

7.4. 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 political office-bearer concerned.

7.5. A council may condone a contravention of the Council approved SCM policy or any by-law giving effect to such policy, provided that the contravention, is not the contravention of MFMA or the SCM regulations, in which case only the National Treasury can condone a contravention of the SCM regulations. Any such requests must be accompanied by a full motivation and submitted to mfma@treasury.gov.za for consideration.

7.6. A submission for Condonation must contain:

- 7.6.1. A detailed motivation as to why the irregular expenditure in question should be considered for Condonation; and
- 7.6.2. A description of remedial steps taken to avoid the recurrence of this type of irregular expenditure.

7.7. A submission for Condonation must be structured as follows:

- 7.7.1. Purpose;
- 7.7.2. Background;
- 7.7.3. Applicable legislative framework;
- 7.7.4. Motivation for Condonation;
- 7.7.5. Remedial steps to prevent recurrence;
- 7.7.6. Financial implications;
- 7.7.7. Personnel implications;
- 7.7.8. Parties consulted; and
- 7.7.9. Recommendations.

7.8. Once the Accounting Officer or Council becomes aware of any allegation of irregular expenditure, such allegation may be referred to the municipality's Internal Audit Unit 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.

8. Ratification of minor breaches of the procurement process

8.1. In terms of Regulation 36(1)(b) of the Municipal Supply Chain Management Regulations, the supply chain management policy of a municipality may allow the Accounting Officer to ratify any minor breaches of procurement processes by an official or committee acting in terms of delegated powers or duties which are purely technical in nature.

8.2. It is important to note that the Accounting Officer 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 procurement processes is contained in a flow chart (labelled as **Annexure "B"**).

8.3. The Accounting Officer may only ratify a breach of *process*, and not the irregular expenditure itself, it means that the irregular expenditure will still remain. The responsibility to ratify the actual irregular expenditure vests with Council and processes to deal with such matters are outlined in section 32(2) of the MFMA read together with Regulation 74 of the MBRR.

8.4. Regulation 36(2) of the SCM Regulations states that the Accounting Officer must record the reasons for any deviations and report to the next Council meeting, and disclose this expenditure in a note to the annual financial statements.

8.5. All breaches of a municipality's SCM policy will result in irregular expenditure, in the event that expenditure is incurred; the monetary value of this irregular expenditure is not relevant. The issue of whether the breach is minor or material relates to the nature of the breach and the intent of those responsible for the breach; not the monetary value thereof.

8.6. In terms of regulation 36(2) of the SCM Regulations, the Accounting Officer is responsible for deciding whether a particular breach of procurement process is minor or material. In exercising this discretion the Accounting Officer must be guided by-

8.6.1. 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?

8.6.2. The circumstances surrounding the breach: are the circumstances justifiable or, at least excusable?

8.6.3. The intent of those responsible for the breach: were they acting in good faith?

8.6.4. The financial implication as a result of the breach: what was the extent of the loss or benefit?

8.7. In terms of the SCM Regulation 36(2), the Accounting Officer may only consider the ratification of minor breaches of procurement processes that are purely of a technical nature.

9. Disciplinary charges for irregular expenditure

9.1. If, after having followed a proper investigation, the Council concludes that the political office-bearer or official responsible for making, permitting or authorising irregular expenditure did not act in good faith, then the municipality must consider instituting disciplinary action and/or criminal charges against liable person/s.

9.2. If the irregular expenditure falls within the ambit of the above description, then the Council, Mayor or Accounting Officer (as may be relevant) must institute disciplinary action as follows:

9.2.1. *Financial misconduct in terms of section 171 of MFMA:* in the case of an official that deliberately or negligently:

9.2.1.1. Contravened a provision of the MFMA which resulted in irregular expenditure;
or

9.2.1.2. Made, permitted or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure);

9.2.2. *Breach of the Code of Conduct for Municipal Staff Members:* in the case of an official whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code; and

9.2.3. *Breach of the Code of Conduct for Councillors:* in the case of a political office-bearer, whose actions in making, permitting or authorizing an irregular expenditure constitute a breach of the Code. This will also include instances where a Councillor knowingly voted in favour or agreed with a resolution before Council that contravened legislation resulting in irregular expenditure when implemented, or where the political office-bearer improperly interfered in the management or administration of the municipality.

10. Criminal charges arising from an act of irregular expenditure

10.1. If, after following a proper investigation, the Council concludes that the official or political office-bearer responsible for making, permitting or authorising an instance of irregular

expenditure acted deliberately or negligently, then the Council must institute a disciplinary procedures and lay criminal charges against the liable official or political office bearer.

- 10.2. If the irregular expenditure was the result of a breach of the definition of irregular expenditure it must be considered in terms of section 173 of the MFMA.

11. Fruitless and wasteful expenditure

- 11.1. The following are examples of fruitless and wasteful expenditure:

11.1.1. Expenditure due to negligence, e.g. cancellation fees incurred for missing a flight, expenditure incurred for a training course and the employee's failure to attend such a course;

11.1.2. Interest on overdue accounts; and

11.1.3. Penalties paid.

- 11.2. The process to respond appropriately to fruitless and wasteful expenditure is similar to the following three processes outlined for irregular expenditure:

11.2.1. *Disciplinary charges* against officials and political office-bearers;

11.2.2. *Criminal charges* against officials and political office-bearers; and

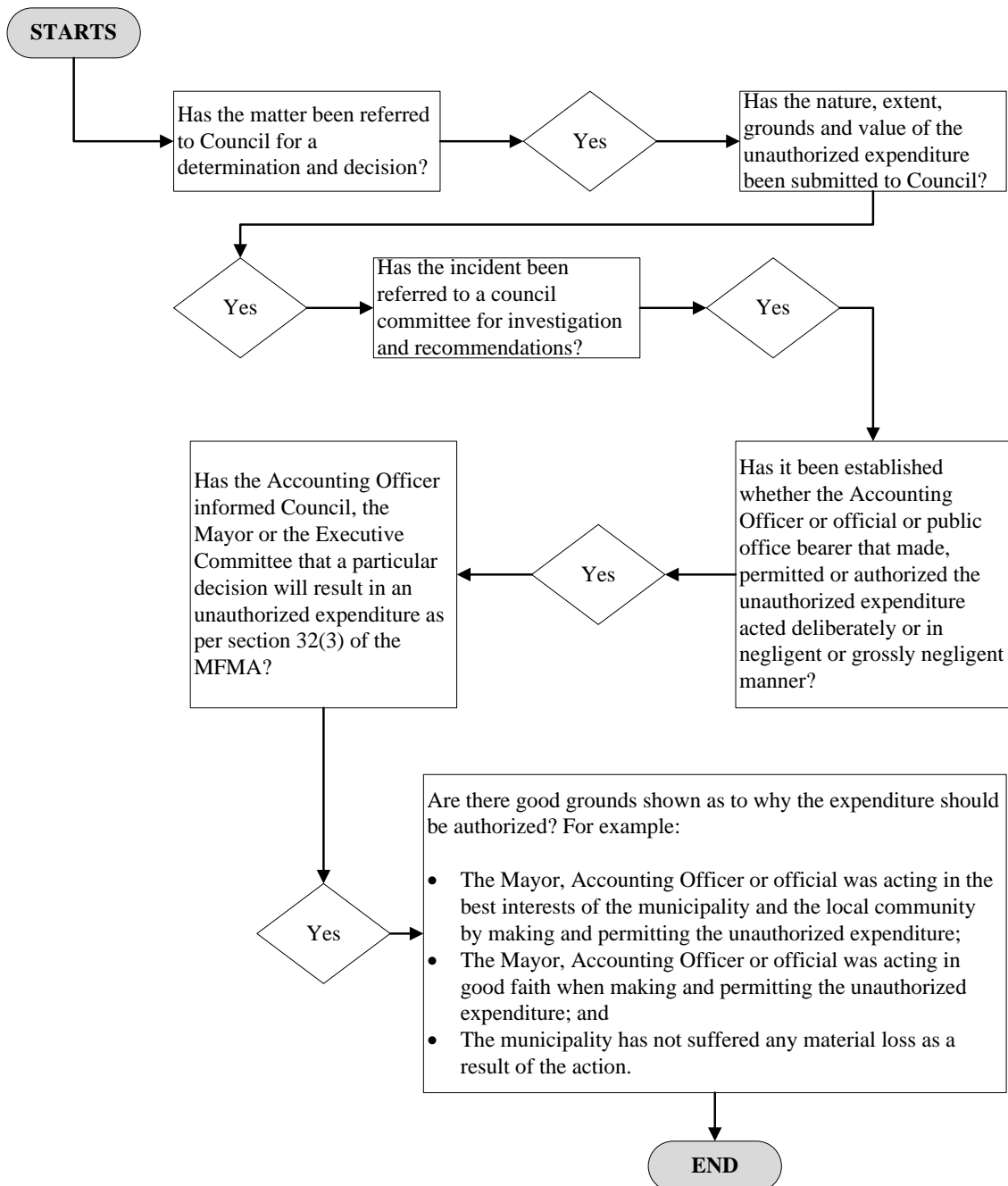
11.2.3. *Recovery* of the fruitless and wasteful expenditure from liable persons.

- 11.3. The description of the categories of irregular expenditure in the above three instances can be applied to fruitless and wasteful expenditure. The difference is that fruitless and wasteful expenditure can arise in any circumstances and is not dependent on non-compliance with any legislation.

- 11.4. Council should follow section 32(2) of the MFMA when dealing with instances of fruitless and wasteful expenditure.

- 11.5. In considering authorisation of unauthorised expenditure, Council must consider the following factors:

Process to be followed when dealing with unauthorized, irregular, fruitless and wasteful expenditure



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

12. Recovery of irregular, unauthorised, fruitless and wasteful expenditure

- 12.1. All instances of irregular expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the Municipal Council, after investigation by Council Committee, as irrecoverable and is written-off by the Council.
- 12.2. Irregular expenditure resulting from breaches of Public Office-Bearers Act is an exemption in that the irregular expenditure must be recovered from the political office-bearer to whom it was paid, who might not have been responsible for making, permitting, or authorising the irregular expenditure.
- 12.3. Once it has been established, as to who is liable for the irregular expenditure, the Accounting Officer must in writing request that the liable political office-bearer or official pay the amount within 30 days or in reasonable instalments. If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the municipality.

13. Procedure for investigation and reporting

The procedure for reporting irregular, fruitless and wasteful, and expenditure and unauthorised expenditure is as follows:

- 13.1. Any employee who becomes aware or suspects the occurrence of irregular, fruitless and wasteful, and unauthorised expenditure must immediately report such expenditure in writing to the Accounting Officer or his/her delegate.
- 13.2. On identification of alleged irregular, fruitless and wasteful, or unauthorised expenditure, such expenditure must be left in the expense account.

- 13.3. Reporting might also occur during the various assurance processes, i.e. internal audit, external audit, compilation of annual financial statements or normal inspections.
- 13.4. The Loss Control Committee as appointed by Council under section 32(2)(a)(ii) of the Act should investigate the matter without delay to determine the validity thereof, i.e. whether it meets the definition of irregular, fruitless and wasteful expenditure or unauthorised expenditure as per section 1 of the Act.
- 13.5. Managers should assist and co-operate with the Loss Control Committee in every aspect of investigation.
- 13.6. The Loss Control Committee must immediately notify the Accounting Officer with the outcome of an investigation. Notification must be in the form of a written report, accompanied by supporting documentation, if relevant.
- 13.7. Details of the reported cases should be recorded in the register of irregular, fruitless and wasteful, and unauthorised expenditure.
- 13.8. For each reported case, the Loss Control Committee must open a case file containing all the evidence and reports received.
- 13.9. The municipality's irregular, fruitless and wasteful, and unauthorised expenditure register must be-
 - 13.9.1. Available at all times for inspection and audit purposes;
 - 13.9.2. Kept in a safe place and protected against fire, water and damage; and
 - 13.9.3. Maintained in electronic format.
- 13.10. Progress with the outcome of each investigation must be updated continually in the relevant register.
- 13.11. During the period of investigation, the expenditure must remain in the expense account and the result of the investigation will determine the appropriate action to be taken regarding that expenditure.

- 13.12. Should the investigation reveal that the expenditure does not constitute irregular, fruitless and wasteful, and unauthorised expenditure; the details of the expenditure should be retained in the relevant Irregular, Fruitless and Wasteful, and Unauthorised Expenditure Registers for the purposes of completeness and to provide an appropriate audit file.
- 13.13. If the expenditure is found to be irregular, fruitless and wasteful, and unauthorised, the particulars of the expenditure should be reported to the Accounting Officer for appropriate action.
- 13.14. The Chairperson of the Loss Control Committee should compile statistics of irregular, fruitless and wasteful, and unauthorised expenditure on quarterly basis in order to identify trends such as risk areas, control weaknesses and areas of non-compliance.
- 13.15. Irregular, fruitless and wasteful, and unauthorised expenditure must be accounted for and disclosed in annual financial statements.
- 13.16. Issues to be considered by the Loss Control Committee:
 - 13.16.1.A Council Committee contemplated in section 32(2)(a)(ii) of the Act to investigate the recoverability of any unauthorised, irregular or fruitless and wasteful expenditure must consider-
 - 13.16.1.1. The measures already taken to recover such expenditure;
 - 13.16.1.2. The cost of the measures already taken to recover such expenditure;
 - 13.16.1.3. The estimated cost and likely benefit of further measures that can be taken to recover such expenditure; and
 - 13.16.1.4. Submit a motivation explaining its recommendations to the Municipal Council for a final decision.
 - 13.16.1.5. The Municipal Manager must provide all information required by the Council Committee referred in 13.5.1, and any other information the Council Committee may require for the purpose of conducting a proper investigation

14. Non-compliance

Non-compliance with this policy will result in appropriate disciplinary procedures being considered and, if necessary, instituted against the relevant official(s).

15. Date of implementation

This policy takes effect on the day of adoption by Council of the municipality.

16. Policy Review

Policy shall be reviewed at the discretion of the CFO due to changing circumstances as a result of the legislation or otherwise.

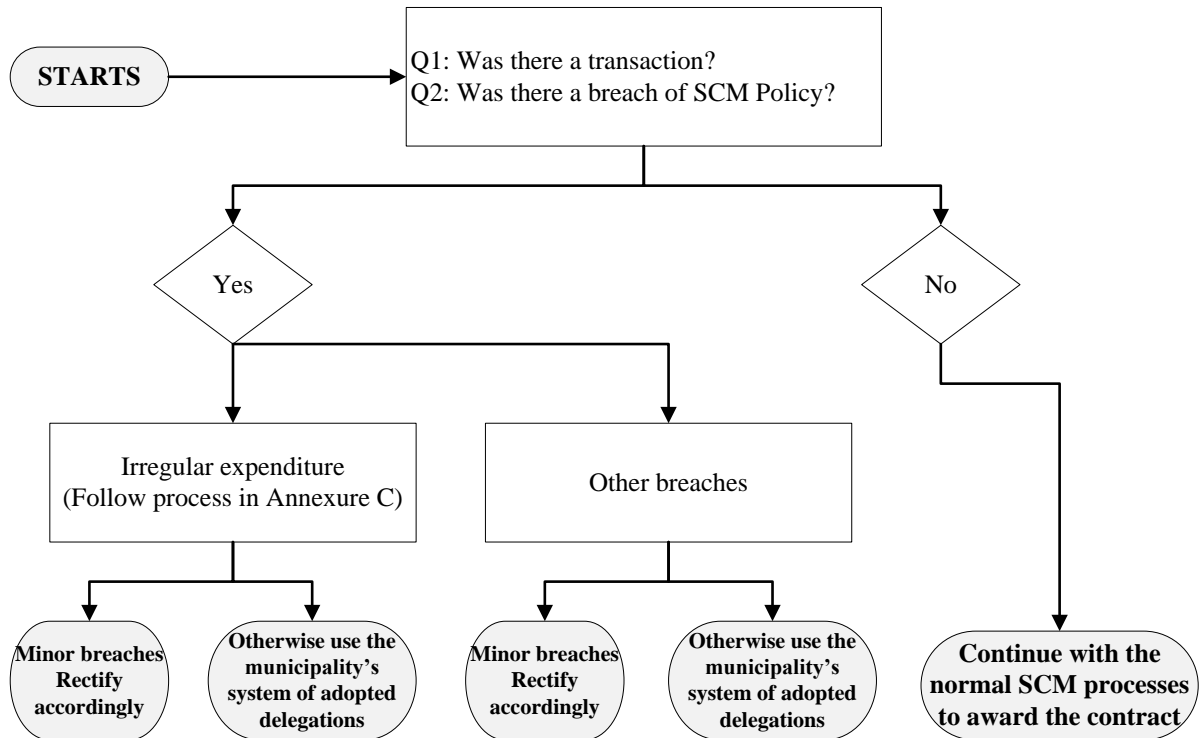
Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditure

Name of Municipality														
No	Date of discovery	Date Reported to Accounting Officer	Transaction details				Person Liabile (Official or Political Office Bearer)	Type of Prohibited Expenditure	Status					
			Date of Payment	Payment Number	Amount	Description of Incident			UI	DP	CC	TR	P	WO

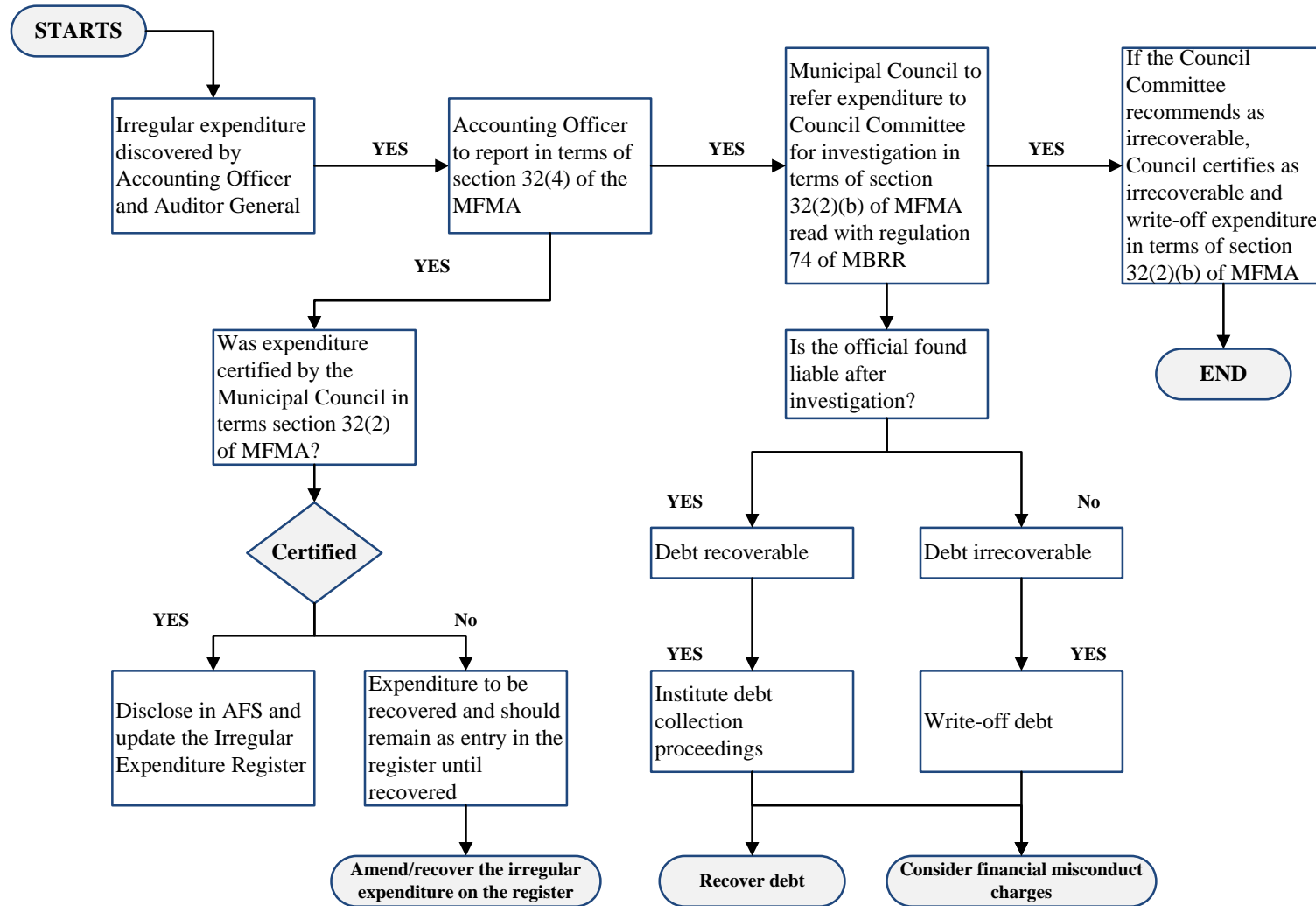
Abbreviations:

- UI: Irregular expenditure Under Investigation
- DP: Disciplinary process initiated against responsible person
- CC: Criminal charges laid with SAPS
- TR: Transferred to receivables for recovery
- P: Paid or in process of paying in instalments
- WO: Written-off by council as irrecoverable

Application of SCM Regulation 36(1)(B)



IRREGULAR EXPENDITURE – STEP BY STEP PROCESS



IRREGULAR EXPENDITURE – ACCOUNTING FRAMEWORK

