

agriculture, land reform
& rural development

Department:
agriculture, land reform & rural development
NORTHERN CAPE PROVINCE
REPUBLIC OF SOUTH AFRICA

FINANCIAL MANAGEMENT POLICY

FINANCIAL MISCONDUCT

Effective date: March 2013

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Document versions

Version	Revision date	Prepared / Revised by	Business unit	Status
1.00	March 2013	T Maruping	OCFO	Final Draft

Document reference library

Document file name	Context and relevance
Public Finance Management Act, Act 1 of 1999	38, 39, 40, 41 or 42 of the Act
Treasury Regulations	All
Departmental Policies and procedures	Revenue, Expenditure, Assets and Liabilities (REAL), HR, Procurement.
Public Servants Code of conduct	All
Public Service Act of 1994	And Amendments
Public Service Resolutions and Collective Bargaining Agreements	ALL

Business area impacted by this policy

Name of business unit / Area	Context and relevance
<ul style="list-style-type: none"> All divisions and business units within the Department 	<p><i>Communicate the Department's policy to all staff.</i></p> <p><i>Notify Internal Audit promptly and in a confidential manner when financial misconduct is suspected or uncovered.</i></p> <p><i>Take no action to investigate or resolve reports of potential financial misconduct made by staff prior to consultation with Risk Management.</i></p> <p><i>Recommend appropriate internal disciplinary measures when there is sufficient evidence of wrongdoing.</i></p>
<ul style="list-style-type: none"> Human Resources Department 	<p><i>Consult with the Accounting Officer and Programme manager when internal discipline involves suspension or termination.</i></p> <p><i>Assist in ensuring that any action conforms to collective bargaining agreements and Departmental policies, as well as informed on employee rights including those related to compensation and benefits.</i></p>
<ul style="list-style-type: none"> Internal Audit and/or Risk Management(OCFO) 	<p><i>Respond promptly to reports of suspected or uncovered financial misconduct.</i></p> <p><i>Conduct appropriate investigations into reports that have been concluded as valid.</i></p> <p><i>Coordinate with relevant offices within the Department and external agencies such as SAPS when necessary to ensure the effective conduct of investigations.</i></p> <p><i>Notify all appropriate offices within the Department of investigation results, advice on appropriate actions.</i></p>
<ul style="list-style-type: none"> Legal Services 	<p><i>Advise on appropriate action, determine the need for legal action on a case by case basis.</i></p> <p><i>Interact or communicate with external legal offices on behalf of the Department as needed.</i></p>

	<i>Refer matters to the relevant Attorney's Office or other outside law enforcement agencies.</i>
• Security Services	<i>Investigate reports submitted by Internal Audit/Risk management. Provide assistance necessary to ensure safety, peace and order within the Department.</i>
• Employees	<i>Read and understand this policy and comply with policy and procedures.</i>

Glossary of terms

Term	Definition
Department	Means the Department of Agriculture, Land Reform and Rural Development (DALRRD)
Chief Financial Officer	The person designated to assist the accounting officer in discharging the duties prescribed in Part 2 of Chapter 5 of the PFMA and the DORA
Programme Manager	Means an employee with a designation of chief director or an employee acting in that capacity duly appointed as by the Accounting Officer
Senior manager	Means a person in the employ of the Department appointed on levels 13 to 16
Budget manager	Means the employee designated in writing and who is responsible and accountable for all resources allocated to business unit/cost centre
Official	Means a person in the employ of a department or constitutional institution including the MEC
Executive Authority	Means MEC for Agriculture, land Reform and Rural Development
Financial misconduct	Financial misconduct refers to any intentional act to acquire financial gain for oneself or for those of relatives, friends or associates from or through activities and transactions related to the business of the South African government. It also refers to any falsification of records, deliberate misrepresentation in financial reporting to the legislature or any internal/external stake holders such as SCOPA, SARS or the public, donors or government or non-government bodies.

1. Policy overview

- 1.1. All employees of government have a responsibility to ensure that state funds and resources are used only in activities that support the missions of the South African Government; to protect state funds and resources from theft, misuse, misappropriation and other conduct that may be injurious to the financial welfare and reputation of government in all its spheres, and to ensure the integrity of government's financial records through accurate reporting.

2. Purpose (Ref. TR 8.1.1.)

- 2.1. Government funds and resources come from annual appropriation by the legislature and in small quantities from donors. These scarce resources requires fiduciary responsibilities by all government employees to utilise funds only in expenses and activities that support the missions of government in accomplishing service delivery to the public and to comply with all applicable national, provincial and local acts, regulations and statutory rules.
- 2.2. The PFMA and Treasury regulations stipulates that Departments must have adequate policies and procedures in place that will provide employees and management to foster stewardship of revenue and expenditure, assets and liabilities and avoid situations that may lead to financial misconduct. Mindful disregard or violation of government's financial policies for the purpose of personal gain or the gain of families, friends or associates places the Department at risk. Such situations must be reported and investigated to according to the guidelines provided in this policy.
- 2.3. The reporting and investigation of potential financial misconduct must conform to established procedures to promote confidentiality and fairness and to help ensure that the conduct of the Department's business is not disrupted.

3. Policy development areas

- 3.1. Authorisation
- 3.2. Criteria
- 3.3. Introduction to financial misconduct
- 3.4. Situations that indicate potential financial misconduct
- 3.5. Fiduciary and stewardship responsibilities

4. Policies

4.1. Authority

- 4.1.1. If an official is alleged to have committed financial misconduct, the accounting officer of the institution must ensure that an investigation is conducted immediately.
- 4.1.2. If an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant authority initiates an investigation into the matter.

4.2. Criteria

- 4.2.1. The Accounting Officer commits an act of financial misconduct if he/she wilfully or negligently-
 - a) Fails to comply with a requirement of section 38, 39, 40, 41 or 42 of the Act; or
 - b) Makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.
- 4.2.2. An employee to whom a power or duty is assigned in terms of Section 44 of the Act commits an act of financial misconduct if he/she wilfully or negligently fails to exercise that power or perform that duty.

4.3. Introduction to financial misconduct

- 4.3.1. Financial misconduct refers to any intentional act to acquire financial gain for oneself or for those of relatives, friends or associates from or through activities and transactions related to the business of the Department.
- 4.3.2. Financial misconduct of any employee of government results in material or financial detriment to the state. It may subject the Department to serious consequences such as penalties, fines and withdrawal of various kinds of support from donors as well as serious negatively impact on service delivery to the public. Financial misconduct committed in any area of government also poses harm to the reputation of the state as a whole and the government's

ability to advance its missions of education, social assistance, public service, housing, patient care and food security.

- 4.3.3. Financial misconduct may also subject offending individuals to disciplinary action from the Department as well as criminal prosecution.
- 4.3.4. Therefore to protect the Department, its missions and all its employees from undue financial and other risks, this policy provides the guidelines to help everyone properly respond to situations that indicate financial misconduct.
- 4.3.5. To make sure that the Department's response to potential financial misconduct is consistent, effective, and fair, all employees of the Department are required to follow the procedures established in this policy on how activities believed to be financial misconduct should be reported and investigated. When reporting suspected financial misconduct, one must be cognizant of the risk of damage to the reputation of an individual who may ultimately be absolved of any wrongdoing. The Department espouses confidentiality and ethical conduct at all times.

4.4. Situation that indicate potential financial misconduct

- 4.4.1. All employees of the Department have a responsibility to report known or suspected financial misconduct associated with the conduct of the Department's business. The exercise of this responsibility, however must always be guided by prudence because, absent of a concrete pattern of egregious activities or open display of utter indifference to the Departments policies and procedures, financial misconduct is often difficult to detect and conclusively prove.
- 4.4.2. Financial misconduct typically involves theft, forgery, attendance and embezzlement. Examples of financial misconduct include, but are not limited to:
 - a) Alteration of records including financial reports,
 - b) Submission of fraudulent travel and subsistence expenses for reimbursement;
 - c) Circumvention of the official competitive bidding processes in order to enter into contractual commitments;
 - d) Employees bidding to government tenders without proper declaration of interest or approval to undertake remunerative work outside employment;
 - e) Acceptance of kickbacks from vendors;

- f) Negligence to complete and submit leave forms in the absence of duty;
- g) Overriding the Department's internal controls such as the established review and authorisation processes for expenditure and revenue manually and on the relevant systems;
- h) Falsification or records related to financial transactions;
- i) Falsification or alteration of various records related to accounting and financial reporting;
- j) Falsification or alteration of various records related to employee tax reporting and benefit plans;
- k) Falsification, alteration or misrepresentation of personnel records and qualifications;
- l) Deliberate misrepresentation in financial reporting to Management and other recipients of financial reports, including budget statements, in year monitoring reports, annual financial statements and other management reports.
- m) Misuse or negligence of the department's assets (including vehicles, furniture, equipment, software etc.).

Caution: *Situations that indicate potential financial misconduct do not confirm culpability. Each must be thoroughly and properly investigated before they can be deemed misconduct that is subject to disciplinary or legal action.*

4.5. Fiduciary and stewardship responsibilities

- 4.5.1. Financial misconduct is a violation of the fiduciary and stewardship responsibilities that employees and management of the Department are expected to exercise. All have a responsibility to ensure that state funds and assets are used appropriately and to exercise due diligence when generating, reviewing and approving transactions that commit the Department to a financial obligation.
- 4.5.2. To help all employees understand and fulfil their fiduciary and stewardship responsibilities, policies and procedures on a variety of financial activities and transactions have been developed.
- 4.5.3. All are expected to know these policies and to follow established procedures, as well as seek guidance whenever appropriate from offices or individuals responsible for specific policies.

5. Process development areas

- 5.1. Reporting potential financial misconduct

- 5.2. Investigation of potential financial misconduct
- 5.3. Reporting results
- 5.4. Disciplinary action
- 5.5. Legal action
- 5.6. Claims for restitution

6. Processes

6.1. Reporting potential financial misconduct

- 6.1.1. When financial misconduct is suspected or uncovered by any employee, it should be reported promptly and in a confidential manner.
- 6.1.2. To report known or suspected financial misconduct, contact the Internal Audit and or Risk Management unit which is bases in the office of the chief financial officer.
- 6.1.3. Employees who wish to report potential misconduct anonymously may call the Department's "Hotline" (If established)- (still to be established).
- 6.1.4. In the event of the potential person committing the financial misconduct is the same person it should in normal circumstances be reported to, that persons conduct must be reported to either the CFO or the Accounting Officer.
- 6.1.5. All information regarding known or suspected of financial misconduct is deemed privileged and confidential. The Department protects the identity of both those who alert the Department and those suspected of wrongdoing.

6.2. Investigation of potential financial misconduct

- 6.2.1. All reports of potential financial misconduct are promptly reviewed by the Director Internal Audit/Risk Management. This division evaluate necessary records and information to verify the validity of the reports and to make a preliminary determination whether an investigation is warranted.
- 6.2.2. Where the Director: Internal Audit/Risk management is of the opinion that sufficient grounds exist that warrant such an investigation; he/she must inform the Chief Financial Officer and Accounting officer of the incident and proceed with the necessary steps to conduct a proper investigation into the alleged financial misconduct.

- 6.2.3. The Department's Internal Audit/Risk Management division has the expertise and the tools to conduct a financial investigation. For this reason only this division should conduct a formal financial investigation, unless circumstances differs (refer to par. 9.5)
- 6.2.4. When an investigation is in process, all units of the Department are required to respond promptly to this unit's enquiries and to provide access to relevant records.
- 6.2.5. Only in the event of the Internal Audit or Risk Management division being the suspected fraudsters, the CFO or Accounting Officer may appoint an external investigator to conduct the potential investigation.
- 6.2.6. The Internal Audit and or Risk Management division must ensure that an investigation commences within 30 days after the alleged financial misconduct has been discovered.
- 6.2.7. The Internal Audit and or Risk management division, depending on the circumstances, is mandated to:
- a) Involve any employee in an investigation into alleged financial misconduct;
 - b) Obtain a legal opinion from the Department's Legal Services;
 - c) Have access to all relevant documentation as well as computers or electronic data;
 - d) Inform the Accounting Officer in writing;
 - e) Involve Human Resources Management to initiate disciplinary Investigation of Financial misconduct;
 - f) Coordinate/cooperate with the Department's Security Services, SAPS or any other agency that is needed to provide assistance or insight in the investigation;
 - g) Proceed against such an employee, and where applicable report the matter to the relevant authorities to initiate criminal proceedings.
 - h) Make recommendations regarding the alleged financial misconduct.
- 6.2.8. When significant financial reporting issues arise in the course of an investigation, or deficiencies in internal control over financial transactions are noted, the Internal Audit/Risk Management unit will notify the relevant office promptly to mitigate risk of continuing losses or misreporting.
- 6.2.9. Because investigations typically involve sensitive subject matters and non-routine risk, the value of timeliness in completing the review of financial

conduct and reporting the results is readily recognised. Internal Audit/Risk Management reporting will be completed as a matter of priority. As warranted by findings, Heads of Divisions and Managers of the area involved may offer supplementary information in a concurrent timeframe with the Internal Audit report.

6.3. Reporting results

- 6.3.1. The Internal Audit and or Risk Management division will prepare a report at the conclusion of the investigation that will summarize issues investigated, procedures followed, conclusions reached, and actions taken by the administrative units within the Department including the unit on which the investigation is centred. The report will be provided to Head of the Department, including the relevant Chief Director and the Executive Authority.
- 6.3.2. When warranted, the unit in which the financial misconduct has been identified will provide a plan of corrective action to safeguard against recurring losses. The Internal Audit/Control sections and CFO will assist units in ensuring improved internal controls.
- 6.3.3. The conduct and outcome of all investigations that result in the finding of financial misconduct are required to be reported to the Audit Committee and in the Annual Report of the Department.

6.4. Disciplinary action

- 6.4.1. The initiation of employee discipline when warranted is the responsibility of the Human Resources Management's division. When disciplinary action is being considered, units are advised to contact the HR Department to ensure compliance with collective bargaining agreements and policies. Human Resources must be informed of any disciplinary action being considered also to ensure that employee rights related to compensation and benefits are protected and harmonious employee relations are maintained.
- 6.4.2. Individuals who have been suspended from their posts cannot be reassigned to their customary duties until the investigation has been completed and Internal Audit/Risk Management has released its recommendations.

6.4.3. The Director: Human Resources Administration must immediately inform the Accounting Officer and Chief Financial Officer of the disciplinary actions instituted against an employee.

6.5. Legal action

6.5.1. When legal action is required, Internal Audit/Risk Management will consult with the Department's Legal division. The Department has vested the responsibility to interact or communicate with any external legal counsel, whether retained within government or private on the Legal division. Only the Legal division is authorised to respond to any requests from any outside legal office as well as to subpoenas and other notices from state and judiciary offices.

6.5.2. The Internal Audit/Risk Management office must advise the Executive Authority, relevant Treasury and the Auditor-General of any criminal charges he/she has laid against any employee.

6.6. Claims for restitution

6.6.1. If the Department has suffered a financial loss as the result of financial misconduct the Internal Audit/Risk Management Director will provide a financial summary to the CFO for submission to the Accounting Officer. Further action on losses to be considered by the Accounting Officer in terms of Treasury Regulation.


7. Approval

7.1. The prescripts and guidelines of this policy on financial misconduct are hereby approved for and on behalf of the Department with effect from.....

Recommended

Tsietsi G Maruping
Chief Financial Officer
Date:

Approved



W.V.D Mothibi
Accounting Officer
Date: 22/05/2013..