

	Directive	
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Title: **Public Finance Management Act (PFMA) Directive – Procedures for dealing with irregular expenditure** Document Identifier: **240-151535779**

Alternative Reference Number: **Not applicable**

Area of Applicability: **Eskom Holdings SOC Ltd**

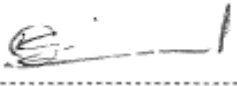
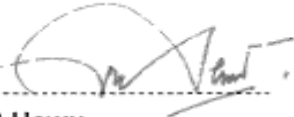
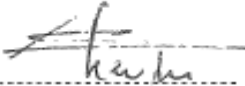

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1. Introduction

- 1.1. Section 55(2)(b) of the Public Finance Management Act (PFMA) of 1999 (as amended) requires the board of directors (Board) to disclose, on a consolidated basis, particulars of the following in the annual financial statements of the company:
 - a. Material losses caused by Criminal Conduct
 - b. Any Fruitless and Wasteful Expenditure
 - c. Any Irregular Expenditure
 - d. Any disciplinary and/or criminal action taken in respect of the above
 - e. Losses recovered or written-off

- 1.2. Section 76 of the PFMA authorises National Treasury (NT) to issue instructions to PFMA compliant institutions from time to time to give effect to the above.

- 1.3. On 16 May 2019, NT issued instruction, National Treasury Instruction No. 2 of 2019/2020, hereinafter referred to as the NT Instruction. This NT Instruction was issued in terms of section 76 of the PFMA.

- 1.4. Eskom responded to the NT Instruction by issuing PFMA directive (document 240-148653765) in September 2019.

- 1.5. The PFMA Directive on irregular expenditure that was issued in September 2019 (document 240-148653765) is hereby withdrawn.

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2. Directive Content

2.1 Directive Statement

2.1.1 Compliance with the laws of the country is non-negotiable. The directive serves to minimise the risk of non-compliance with the NT Instruction, until such time that the new/amended reporting procedure is finalised.

2.1.2 In so far as any inconsistency may exist between this directive and PFMA reporting procedure 32-92, the provisions contained in this directive shall prevail.

2.2 Directive Principles or Rules

2.2.1 The reporting requirements are set out in section 55(2) (b) of PFMA.

2.2.2 The principles of disclosure are set out in Eskom policy 32-92.

2.2.3 The following other sections of the PFMA are worth noting:

2.2.3.1 Section 51(1)(b)(ii) – take effective and appropriate steps to, amongst others, prevent irregular expenditure and fruitless and wasteful expenditure

2.2.3.2 Sections 83(1)(b) – the Board commits an act of financial misconduct if it wilfully or negligently makes or permits irregular expenditure or fruitless and wasteful expenditure.

2.2.3.3 Section 51(1)(e)(iii) – take effective and appropriate disciplinary steps against any employee who makes or permits irregular expenditure.

2.2.3.4 Sections 83(3) – employees to whom a power or duty is assigned in terms of section 56 of the PFMA commit an act of financial misconduct if they wilfully or negligently fails to exercise that power or perform that duty to, amongst others, take effective and appropriate steps to prevent irregular expenditure within that employee's area of responsibility (section 57 further refers).

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3. Supporting Clauses

3.1 Scope

This directive covers the statutory obligation to report irregular expenditure as well as associated losses, including fraud and other criminal conduct, where applicable.

3.1.1 Purpose

The purpose of this directive is to minimise the risk of non-compliance with the NT Instruction until such time that the new PFMA reporting procedure is finalised.

3.1.2 Applicability

This directive shall apply throughout the group of companies, Eskom Holdings SOC Ltd.

3.1.3 Effective date

This document is effective once authorised, from date of publication.

3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

3.2.1 Normative

- [1] Public Finance Management Act, no. 1 of 1999 (as amended)
- [2] PFMA Regulations of 15 March 2005 - Government Gazette no. 27388
- [3] National Treasury Instruction No. 02 of 2019/2020
- [4] 32-92 (Rev 0): The reporting of losses due to criminal conduct, irregular expenditure, and fruitless and wasteful expenditure, in terms of the Public Finance Management Act policy

3.2.2 Informative

Not applicable

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3.3 Definitions

As set in Chapter 1 of the PFMA and Chapter 1 of the NT Instruction:

- 3.3.1 **Irregular expenditure** means expenditure, other than unauthorized expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including the PFMA.
- 3.3.2 **Fruitless and wasteful expenditure** means expenditure which was made in vain and would have been avoided had reasonable care been exercised, hereinafter referred to as **‘Losses’**.
- 3.3.3 **Assessment** means a test conducted to identify possible irregularities in transactions processed and to confirm the allegations of irregular expenditure.
- 3.3.4 **Condonation** means a process whereby the relevant authority acknowledges the irregular expenditure and pardons the action that has resulted in the incurrence of irregular expenditure.
- 3.3.5 **Determination** means an assessment conducted to examine or analyse the particulars of non-compliance in order to establish the facts and to determine the loss (es) related to the transaction.
- 3.3.6 **Investigation** means a formal probe conducted by a function performing investigations to analyse the particulars of non-compliance in order to establish the facts about the transaction and to determine whether any fraudulent, corrupt or criminal act has taken place.
- 3.3.7 **Non-compliance** means the failure to comply with a legal requirement.
- 3.3.8 **Removal** means the process of eliminating the irregular expenditure from notes to the annual financial statements if it was not condoned by the relevant authority.
- 3.3.9 **Relevant Authority** means the National Treasury.
- 3.3.10 **Relevant Authority (Internal)** means the internal person or committee herein authorised to recommend a condonation request for submission to National Treasury for condonation.

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3.4 Abbreviations

Abbreviation	Explanation
NT	National Treasury
DTC	Divisional Tender Council
ETC	Eskom Tender Council
CFO	Chief Financial Officer
GE	Group Executive
DDG	Deputy Director-General
PFMA	Public Finance Management Act
BOARD	Board of Directors of Eskom Holdings SOC Ltd

3.5 Roles and Responsibilities

3.5.1 Notwithstanding the requirements as set out in Eskom policy 32-92, the accountability for this directive as well as the responsibility for its implementation throughout the Eskom Group rests with the respective group executives and subsidiary chief executives, as well as the heads of business units that report directly to the Eskom Group Chief Executive.

3.6 Process for Monitoring

3.6.1 Irregular expenditure is incurred when the expense is recognized in the financial record in accordance with the relevant accounting framework.

3.6.1.1 For a transaction to constitute irregular expenditure:

- (a) it must be in contravention of, or not in accordance with legislation; and
- (b) it must be incurred upon recognition in terms of accounting principles.

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Assessments

- 3.6.2 Groups and subsidiaries must review the compliance universe to identify non-compliances.
- 3.6.3 Non-compliances must be assessed for irregular expenditure [Clauses 11 and 12].
- 3.6.4 Assessments must be logged onto the divisional PFMA register, as well as on the Condonation Register.
- 3.6.5 Assessments, referred to as Preliminary Investigations in Eskom procedure 32-1034, are the responsibility of divisional and subsidiary line management.

Determinations

- 3.6.6 Where, through the assessment process, irregular expenditure has been identified, a determination must be conducted [Clauses 19 and 20].
- 3.6.7 For procurement-related violations, the determination shall be conducted by the Risk and Governance Section within the Procurement and Supply Chain Management Division.
- 3.6.8 For other violations, the divisional group executives and subsidiary chief executives shall ensure that the determination is conducted by an independent function or line manager within that division or subsidiary.
- 3.6.9 The following information is required before a determination may be concluded:
- (a) the root causes that led to the transgression;
 - (b) the employee(s) responsible for the irregular expenditure;
 - (c) whether Eskom suffered a loss (as defined);
 - (d) any breakdown in the designed internal controls;
 - (e) Any suspicion of fraud or other criminal conduct; and
 - (f) Whether or not any fault exists on the part of the supplier.

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3.6.10 The Determination must commence within 30 days of the matter being logged.

3.6.11 On suspicion of fraudulent, corrupt or other criminal conduct, the matter must be referred to the Assurance and Forensic Department (A&F) for investigation (as defined).

Investigations

3.6.12 The investigation must provide at least the following –

- (a) root causes that led to the transgression;
- (b) fraudulent, corrupt or other criminal conduct;
- (c) employee(s) responsible for the irregular expenditure;
- (d) whether Eskom suffered a loss (fruitless and wasteful expenditure); and
- (e) whether or not the matter must be referred to the South Africa Police Service.

3.6.13 The investigation referred to in paragraph 3.6.12 above must commence within 30 days of the determination test being finalised. [Clause 25 of the NT Instruction].

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RECOVERIES

3.6.14 If the determination finds that losses were incurred (fruitless and wasteful expenditure), then Eskom must take steps for recovery of such amounts. [Clause 30 of the NT Instruction]

3.6.15 In terms of clause 31 of the NT Instruction, the amount of debt recoverable may equate to the value of the loss incurred as a consequence of the employee's action(s).

3.6.16 In a case where the Board is responsible for the debt, National Treasury must determine the value of the debt incurred as a consequence of his or her action(s) that led to incurrence of the irregular expenditure or may determine a lesser amount.

3.6.17 Recovery of losses must be done in accordance with debt management policy.

3.6.18 Eskom must, in writing, notify the responsible employee of the debt and request that the amount involved be paid within 30 days. This is as per clause 36 of the NT instruction. Approval that the debt is paid in a reasonable number of instalments may be granted by the line manager concerned.

3.6.19 If the person/employee responsible for the debt denies liability for the debt, then the matter must be referred to the Legal Department who will decide on liability and whether to pursue civil recovery or not. This is in accordance with clause 40 of the NT Instruction.

3.6.20 If the amount of a debt is irrecoverable from a responsible employee, then the debt may be written off in accordance with Eskom's debt write off policy. If the Board is responsible for the debt and is unable to re-pay the debt, the matter must be reported to National Treasury who will consider approving the write off [Clause 42 of the NT Instruction].

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INCIDENTS WHERE THERE ARE NO LOSSES TO ESKOM

3.6.21 If the Determination report confirms that no loss (fruitless and wasteful expenditure) was incurred during the contravention of legislation and that value for money was achieved, then the matter must be referred, through the relevant line manager, as follows [Clause 44 of the NT Instruction refers] –

- (a) to the applicable Human Resource Department to assist with disciplinary processes;
- (b) to the relevant Tender Council (DTC or ETC) or other Internal Relevant Authority for recommendation for condonation, including confirmation that all internal matters have been dealt with; and
- (c) to the Relevant Authority (National Treasury) for condonation of the irregular expenditure where the transaction is not related to fraudulent, corrupt or other criminal conduct; or
- (d) to the Board, for removal of the irregular expenditure if National Treasury decides to not condone the irregular expenditure.

3.6.22 If the determination report or investigation report does not state categorically that there is no evidence of fault on the part of the supplier, the supplier cannot be paid.

FRAUDULENT, CORRUPT OR OTHER CRIMINAL CONDUCT

3.6.23 If the investigation confirms that the irregular expenditure is related to a fraudulent, corrupt or other criminal conduct, then Eskom must, within seven days, ensure that a criminal charge is laid with the South African Police Service against the responsible employee(s) [Clause 45 of the NT Instruction].

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MATTERS REFERRED TO HUMAN RESOURCE FUNCTION

3.6.24 If the determination or the investigation into the irregular expenditure confirms that there is an employee who is responsible for the irregular expenditure, while Eskom did not suffer any loss, the matter must be referred to the Human Resources Department to institute disciplinary processes in line with the relevant human resource prescripts [Clause 46].

FINANCIAL MISCONDUCT CASES

3.6.25 Section 51(1) (b) (ii) of the PFMA require that Eskom take effective and appropriate steps to prevent irregular expenditure and losses resulting from criminal conduct.

3.6.26 In terms of sections 83(1) (b) of the PFMA, the Board commits an act of financial misconduct if they wilfully or negligently makes or permits irregular expenditure.

3.6.27 Similarly, sections 83(3) of the PFMA provide that employees to whom a power or duty is assigned in terms of section 56 of the PFMA commit an act of financial misconduct if they wilfully or negligently fail to exercise that power or perform that duty to, amongst others, take effective and appropriate steps to prevent irregular expenditure within that employee's area of responsibility.

3.6.28 In terms of section 51(1) (e) (iii) of the PFMA, Eskom must take effective and appropriate disciplinary steps against any employee who makes or permits irregular expenditure.

3.6.29 If an allegation of financial misconduct is confirmed, the Board must ensure that disciplinary processes are initiated against the employee concerned in accordance with the relevant prescripts and agreements regulating the employment of the applicable category of employees. [Clause 51]

3.6.30 If the Board or any of its members is alleged to have committed financial misconduct, then the Minister of Public Enterprises [Minister] must be informed. The Minister shall initiate an investigation into the matter within 30 days, and if the allegations are confirmed, must ensure that appropriate disciplinary processes are initiated immediately as required by Treasury Regulation 33.1.3. [Clause 53]

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IRREGULAR EXPENDITURE REFERRED FOR CONDONATION

3.6.31 National Treasury Instruction No. 2 of 2019/2020 defines the relevant authority (condoning authority) for all irregular expenditure as National Treasury [Chapter 1 of the NT Instruction].

3.6.32 As from 1 June 2019, DTC or higher authority may only condone an irregular expenditure if:

- (a) The determination report (titled '*Annexure B – Detailed Investigation Report*' per Eskom Procurement Procedure 10-34) was completed prior to 30 April 2019; and
- (b) That determination report concluded that the DTC concerned is the relevant authority for the purpose of condonation.

3.6.33 All other irregular expenditure shall be submitted to National Treasury for condonation.

3.6.34 If a condonation is approved internally in violation of this directive, then for the purpose of PFMA disclosure, the condonation is invalid. The matter may not reflect on the PFMA register as condoned. The line manager concerned must ensure that the transaction is re-submitted through the process, including to National Treasury for condonation where applicable.

3.6.35 The Internal Relevant Authority for recommending condonation of procurement-related irregular expenditure is the Divisional or Eskom Tender Council (DTC or ETC) concerned. These condonation requests are to be addressed to the National Treasury Deputy Director-General: Chief Procurement Officer.

3.6.36 The Internal Relevant Authority for recommending condonation of all other irregular expenditure is the Chief Financial Officer. These condonation requests are addressed to the National Treasury Deputy Director-General: Accountant-General.

3.6.37 In accordance with clause 56 of the Instruction, at a minimum, the following information must be considered as part of the condonation request to National Treasury –

- (a) confirmation that the determination test was conducted;
- (b) the findings and recommendations contained in the determination report;

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- (c) confirmation that internal investigations were conducted in cases of alleged or identified fraudulent, corrupt or other criminal conduct;
- (d) confirmation that a criminal charge has been laid in the case of alleged fraudulent, corrupt or other criminal conduct;
- (e) findings and recommendations of a functionary that conducted the investigation;
- (f) confirmation that losses (fruitless and wasteful expenditure) were not incurred and that value for money was achieved;
- (g) confirmation that disciplinary action was taken against the responsible employee; and
- (h) confirmation of remedial actions taken or being taken by Eskom to prevent the recurrence of such irregular expenditure in similar circumstances.

IRREGULAR EXPENDITURE REFERRED FOR REMOVAL

3.6.38 If the National Treasury does not condone an irregular expenditure, then the Board may remove that matter from the register of irregular expenditure. [Clause 57]

3.6.39 In accordance with clause 58 of the NT Instruction, the removal of irregular expenditure may take place only if the Board is satisfied that –

- (a) the matter is free of fraudulent, corrupt or other criminal conduct;
- (b) disciplinary action was taken against the responsible employee(s);
- (c) the non-compliance that led to the irregular expenditure has been addressed to ensure that such expenditure does not recur under similar circumstances;
- (d) transactions similar in nature are reviewed to ensure compliance; and
- (e) if Eskom suffered a loss, then removal may only occur if the Legal Department has confirmed in writing that the loss is irrecoverable.

3.6.40 The Board may proceed with the removal of irregular expenditure from the notes to the annual financial statements after confirmation of the processes indicated above.

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EXPENDITURE REFERRED TO SAPS

3.6.41 If the investigation conducted confirms that the irregular expenditure relates to fraudulent, corrupt or other criminal conduct, then the Board must ensure that, within seven days, a criminal charge is laid with the South African Police Service. [Clause 60]

3.6.42 Eskom must also inform the Minister, National Treasury and the Auditor-General within seven days after laying the above criminal charge. [Clause 61]

3.6.43 Where criminal charges have been laid against a member of the Board, the Minister must inform National Treasury and the Auditor-General within seven days after laying a criminal charge against the Board or Board member. [Clause 62].

REPORTING RESPONSIBILITIES

3.6.44 An employee who becomes aware or suspects the incurrence of irregular expenditure or fruitless and wasteful expenditure (losses) must immediately report the matter [Clause 65].

3.6.45 Eskom Whistle-Blowing Policy 32-250 (revision 3) sets out the internally established mechanisms through which employees may make disclosures of unlawful or irregular conduct. Disclosures made via the following reporting mechanisms (amongst others) and in good faith will be regarded as protected disclosures:

- PFMA Office (PFMAoffice@eskom.co.za)
- Toll Free hotline 0800 112722
- Direct e-mail to Forensic: investigate@eskom.co.za
- Senior Manager, Forensic and Anti-Corruption
- Eskom Board members

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3.6.46 In terms of section 55(2)(b) of the PFMA, Eskom's annual report and financial statements must include the following related to losses and irregular expenditure for that financial year:

- (a) any material losses through criminal conduct, and any irregular expenditure and any fruitless and wasteful expenditure incurred;
- (b) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure; and
- (c) any losses recovered or written off.

3.6.47 The divisions and subsidiaries shall ensure that PFMA registers are updated in accordance with clause 74 of the Treasury Instruction, incorporating information relating to –

- (a) Disciplinary processes – matters referred to Human Resource Function;
- (b) Recoveries – matters referred to the Legal Department;
- (c) Criminal conduct – matters referred to South African Police Service;
- (d) Condonation – matters referred to National Treasury
- (e) Removal – matters referred to Board (if the irregular expenditure was not condoned by the relevant authority)

3.6.48 The PFMA register (document identifier: 240-140712349) must be kept up to date in order to track all the alleged and confirmed irregular expenditure and to maintain correct and accurate information for purposes of an audit trail.

- (a) Irregular Expenditure Under Assessment – non-conformances identified that are being assessed for irregular expenditure
- (b) Irregular Expenditure Under Determination – where irregular expenditure has been identified through the assessment process and additional facts need to be established.
- (c) Irregular Expenditure 'Open Items' – where the determination is completed, and the matter is being taken through the remainder of the process.
- (d) Once captured on the PFMA Register, a transaction may not be deleted or removed from the report or register without prior approval from the PFMA Office.

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- (e) Open items (matters requiring further action) will be carried forward into future reporting periods.
- (f) Changes to the prior year closing or opening balances shall be appropriately disclosed by the divisions, and accordingly in the PFMA note in the financial statements.
- (g) Losses due to criminal conduct shall be disclosed in line with the Significance and Materiality Framework. Material losses shall be tracked by the PFMA Office to ensure that they are disclosed in the AFS in accordance with the requirements of the PFMA.

3.6.49 With the exception of procurement-related irregular expenditure, the Determination shall be conducted in the format of the PFMA Determination Template (document identifier: 240-142824983). The determination report (or investigation report if applicable) shall be available to the PFMA Office for audit purposes, along with all supporting documents.

3.6.50 The PFMA checklist or register shall also serve as a lead schedule for the losses and expenditure to be disclosed in the note to the annual financial statements to ensure its accuracy and completeness.

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4. Authorization

This document was sent electronically to the following persons, and amended where required:

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Nico Harris	Chief Information Officer (Acting)
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5. Revisions

Date	Rev.	Remarks
August 2019	1	New document
October 2019	2	Revision to exclude reference to loss control function

6. Development Team

The following people were involved in the development of this document:

- Dale Sicard
- Thea Verreynne

7. Acknowledgements

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