AUDIT PERSPECTIVES

AUDIT ACT AMENDMENTS AIM TO FOSTER CLEAN GOVERNANCE IN THE PUBLIC SECTOR

by Kimi Makwetu

Parliament's unanimous vote to give our office extended powers has recently assumed centre stage in our public discourse. This debate reached a crescendo last November when President Cyril Ramaphosa signed into law and endorsed these changes that will expand our public sector audit mandate. Subsequently, the President proclaimed 1 April 2019 as the commencement date of Public Audit Amendment Act.

As is the nature of our country's robust, free speech disposition, South Africans have boldly ventured their views on the signed amendments to the Public Audit Act (PAA), the legislation that determines not only the nature and scope of our audits, but also the internal operations of our organisation – the Auditor-General of South Africa (AGSA).

These strong opinions ranged from ordinary citizens flooding social and traditional media platforms with messages overwhelmingly hailing the new powers as a long-awaited answer to their persistent calls for the Auditor-General to be given what many referred to as "more teeth" or "more bite instead of a bark". This being their reference to and a comparison of our earlier audit mandate before the amendments – where we only audited and reported the audit outcomes to Parliament, the provincial legislatures and municipal councils, and relied on the executive to address our findings and implement our recommendations.

There have also been some, chiefly public servants and academics, who welcomed the revisions but also raised their concerns that the amendments might result in us "over-reaching" our key constitutional mandate, thus infringing on the work of those charged with public sector administration such as accounting officers and accounting authorities. During the extensive parliamentary deliberations on and the president's scrutiny of the amendments, these concerns were thoroughly dealt with and related fears allayed.

My office has mostly opted to wait for the signing of these changes into law before we could authoritatively and widely share the intended aim and meaning of these amendments, thus further allaying the concerns that some may still have on this historic development.

This article, one of many planned educational initiatives on this matter, aims to briefly outline the essence of the key changes that the parliamentarians from all the political persuasions collectively voted for, with the president ratifying them into law.

Our mandate to audit with integrity, without fear or favour

At the outset, it is worth restating that as the country's supreme audit institution, ours is the only institution that, by law, has to audit and report on how government is spending taxpayers' money. It does this by examining the accounting records and related transactions to support financial statements and report on the manner in which finances are managed, handled and reported on by institutions funded from the public purse. This has been the broad focus of the AGSA since its inception in 1911.

Rationale for the extension of our audit mandate

In 2016, concerned by the growing extent of irregular, unauthorised, fruitless and wasteful expenditure reported by my office every year at all government tiers, the multi-party parliamentary committee that oversees the AGSA, the standing committee on the auditor-general (Scoag), initiated the process to expand our mandate beyond just auditing and reporting.

In their collective wisdom, the members of this committee, later fully backed by the National Assembly, the National Council of Provinces and the President of the Republic felt that expanding our mandate would go a long way to further support other existing pieces of legislation that are aimed at ensuring good governance and clean administration in the public sector. These legislative instruments include the Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA). Both the PFMA and MFMA contain extensive guidance on what the law requires accounting officers and accounting authorities to do, and even outline the consequences that must be assigned in the event of financial misconduct. This includes the responsibility to quantify and recover money due to the State.

Therefore, the latest amendments to the PAA should be seen as further reinforcements to these and other extant, good governance legislative tools. Also, this amendment will serve to elevate the existing responsibility of line managers as they were envisaged when the PFMA and MFMA were promulgated around 20 years ago.

How will these amendments work?

The AGSA's audit activities are much the same as they had been before the latest amendments, except for three key additional steps that we can now take – beyond our traditional mandate of auditing and reporting.

The Public Audit Amendment Act introduces the concept of a material irregularity (MI) – which is the central feature of this amendment. The introduction of a focus on material irregularity is so that other common errors or deficiencies are isolated and those activities putting the public purse at risk of financial loss are identified and pursued.

A material irregularity (MI) means any fraud, theft, breach of a fiduciary duty or non-compliance with or contravention of the law that could result in a material loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public.

This means that the focus of an audit will have to thoroughly assess the existence or otherwise of material irregularities in transactions or balances. This is important as it eliminates any speculation or doubt about the nature and substance of matters leading to, say, irregular expenditure or lack of proper accounting rigour.

Once a material irregularity during an audit performed under the PAA has been identified or suspected, the AG may now take the following actions (extended powers):

(i) Refer a suspected MI to a public body with a mandate and powers that are suitable for the nature of the specific suspected material irregularit. Authorities with requisite investigative capacity and skills include the public protector, special investigations unit and the South African Police Service. The public body would deal with the matter within its own legal mandate and take appropriate action where necessary

OR

(ii) Make recommendations in the audit report on how an MI should be addressed, within a stipulated period of time. If these recommendations have not been implemented by the stipulated date, the AG must take binding remedial action; and if the MI involves a financial loss, issue a directive to the acounting officer or accounting authority to quantify and recover the loss from the responsible person.

(iii) If the accounting officer or accounting authority fails to implement the remedial action, including a directive to quantify and recover a financial loss, the AG must issue a certificate of debt in the name of the relevant accounting officer or accounting authority. It is the responsibility of the relevant executive authority such as a minister, a member of the executive council (MEC) or a municipal council, to recover the loss from the accounting officer or authority.

These three steps come with many checks and balances, giving the public entity or department concerned enough opportunity to fix the flagged problem before it gets to the issuing of a certificate of debt. That action would only be taken if and when those charged with governance fail to act.

In essence, the primary responsibility to identify and action material irregularities still remains with the line management of the audited institution. No part of their statutory responsibilities is transferred to the auditor-general. The auditor-general, through these amendments, provides a transparent and reliable source of evidence and monitors the proper restoration of an accountable system of financial management.

It is worth noting that our audit teams will note these breaches as they come to our attention during our annual audits. This means there will be no need for us to increase the audit scope to identify an MI. This will be factored in as part of our normal audit work.

Some might rightfully ask what will happen to those who had in the past incurred irregularities that could be deemed as MIs by the new amendments? The amendment act does not apply retrospectively. However, in the case of long-term contracts that are still operative when the MI is detected, the AG's right to refer or take remedial action will apply. This means that if an MI that occurred in the past is detected during an audit that results in an audit report issued after the commencement of the amendment act, it can still attract the extended powers of the AG. The test is therefore the date of the audit report.

We recognise and appreciate the immense responsibility that comes with these powers. We undertake to use these responsibly and for the betterment of our country and the lives of her people. For decades now, our office has been part of a national drive towards wholesale good governance in our public sector. These amendments therefore are not meant to be punitive, but are just a gear shift in this critical developmental journey. And we are buoyed that the majority of South Africans are fully behind us as we embark on this phase of the drive to further bolster our democracy through clean governance.

Makwetu is the auditor-general of South Africa

AUDITOR-GENERAL SOUTH AFRICA

Auditing to build public confidence