

NATIONAL COUNCIL OF PROVINCES

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 205

DATE OF PUBLICATION: 28 MAY 2010

Mr Z Mlenzana (COPE-EC) to ask the Minister of Finance

Whether the Government will further tighten the provisions of the Public Finance Management Act, Act 1 of 1999 and Municipal Finance Management Act, Act 56 of 2003, to avoid similar lootings that occurred at the [Companies and Intellectual Property Registration Office](#); if not, why not, if so, (a) how and (b) when will this happen?

CW276E

REPLY:

The National Treasury is of the view that there are sufficient provisions in both the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) and the Municipal Finance Management Act (MFMA), 2003 (Act 56 of 2003) to prevent the abuse of public funds. The challenge is to ensure that Accounting Officers implement the Acts fully and have the appropriate fraud prevention plans and internal controls in place to prevent such abuses.

The PFMA regulates financial management in government departments and public entities and aims to ensure that public funds are used efficiently and effectively. In meeting this objective the PFMA provides for the responsibilities of persons entrusted with financial management.

In terms of section 51 of the PFMA, the Accounting authority of a public entity is responsible for, amongst others:

- Effective, efficient and transparent systems of financial and risk management. These risk management strategies must include a fraud prevention plan.

- Effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not complying with the operational policies of the public entity.
- Management and safeguarding of the assets and for the management of the revenue, expenditure and liabilities of the public entity.

Sections 81 - 86 of the PFMA also make provisions for sanctions against non-compliance. Persons who are found responsible for non-compliance are liable to a charge of financial misconduct which may lead to a dismissal or suspension.

The MFMA, through chapter 15, has similar provisions to the PFMA and deals with financial misconduct, disciplinary and criminal proceedings as they apply to municipal officials and councilors, municipal entities and members of boards of municipal entities. The provisions also cover offences and penalties. It provides for processes and procedures to be followed in the event that allegations of misuse of public funds arise. It also contains enforcement provisions that seek to sanction officials who are found guilty of financial misconduct.

The National Treasury is of the view that incidences of fraud in public institutions are not due to deficiencies in legislation but rather deliberate non-compliance with the provisions of the legislation, lack of enforcement by implementing departments as well as a lack of adequate supervision by control structures.