



**HIRSHABELLE STATE OF SOMALIA**

**Public Financial Management Law 2018**

Applicable from

31 March 2018

**Regulation #7.**

**Regulation on Establishing Sanctions for Non-Adherence to the  
PFM law**

## **1. Authority & Purpose**

1.1. This regulation is issued pursuant to Part X, Section 35 of the Public Financial Management Law 2018 (PFM Act). This regulation is a “disallowable instrument” as defined in the PFM Act and in accordance with Section 7 is subject to a review period not to exceed ten (10) days by Parliament.

1.2. The purpose of this regulation is to provide further details on Sanctions in relation to the infringement of any provision of the PFM Law 2018.

1.3. This Instruction applies to all agencies, entities and institutions of the Hirshabelle State of Somalia as defined in Section 1, Paragraph 3 of the Public Financial Management Law 2018 that are funded from the consolidated fund

## **2. Definitions**

“*Authorizing Officer*” means a public officer delegated authority under Section 5 (4) or Section 6 (40) of the PFMA and Instruction A, Delegation of Authorities

“*Conviction*” Officially being found to be guilty of a particular crime, or the act of officially finding someone guilty

“*Electronic Signature*” means symbols or other data in digital form attached to an electronically transmitted document as verification of the signatory’s intent to sign the document. This type of signature provides the same legal standing as a handwritten signature as long as it adheres to the requirements of the specific regulation it was created under

“*Head of Agency*” or “*Head of Spending Unit*” means the Minister in the case of any Ministry or the principal executive officer of any other public agency, entity or institution

“*Indictment*” A written accusation charging that an individual named therein has committed an act or omitted to do something that is punishable by law.

## **3. Offences and Penalties**

2.1. Violation of any provision of the PFM Act or Regulations made thereunder shall be punishable in accordance with this Regulation

#### 4. Personal Liabilities of Authorizing Officers

3.1. An Authorizing Officer of a Government Agency shall bear ultimate responsibility for overspending and illegal or improper payment of the Government Agency.

3.2. An Authorizing Officer is personally liable for repaying an illegal or improper payment, unless the Hirshabelle State of Somalia received value for the payment.

3.3. If a head of a Government Agency orders an Authorizing Officer to act in contrary to the PFM Act or regulations, the Authorizing Officer shall submit to the head of the Government Agency a written opinion that the order is likely to cause illegal or improper payment, before implementing the order.

3.4. If the written opinion is submitted under paragraph (3.3) but the Head of the Government Agency does not withdraw the order, the Authorizing Officer shall submit a copy of his opinion to the Auditor General, and the personal liability for the illegal or improper payment caused by the order is shifted to the head of the Government Agency concerned.

#### 4. Records as Evidence

4.1. Without prejudice to the admissibility of information of any electronic financial management transaction found within the government financial management information system, whether it is presented in the form of any document, computer print-out, hard copy, or any other electronic media or form, said information is probative in any court of any financial transaction it may depict or to which it may relate.

4.2. Photographic images such as film or computer images of original documents such as checks, electronic funds transfer or other payment instruments or account ledger, shall be admissible as *prima facie evidence* of any matter or transaction related to an original financial management transaction, as if proof is being given on affidavit.

4.3. Payment instructions, messages and funds transfers that are initiated, processed and executed through electronic or manual means, including electronic signatures, shall be admissible as *prima facie evidence* of the financial management transactions, as if on being given on proof of written affidavit.

4.4. The entries in ledgers, cash books and other books of account of any budget entity whether captured manually by handwriting or computerized shall be admissible as *prima facie* evidence of the matter, financial management transaction or account recorded by them, the same as if presented on proof being given on affidavit by the Authorizing Officer or other officer of such budget entity or by evidence that such manual or computerized ledgers, cash books and other books of account are or have been the original books of account of the budget or accounting entity and that the entries have been made in the usual and ordinary course of business; and that the books are in or come immediately from the custody of the Hirshabelle State of Somalia.

## **5. Organizational Sanction**

5.1. The Minister shall take at least one of the actions mentioned in paragraph 5.2, if a Government Agency:

- (a) makes a commitment or authorizes a payment exceeding an appropriation or budget allotment;
- (b) authorizes an improper payment; or
- (c) violates a provision of the PFM Act in regard to improper spending and handling of public money

5.2. Actions to be taken against the irregularity mentioned in paragraph 5.1 include –

- (a) Requiring the Ministry Head (Authorizing Officer) to submit an action plan for the Minister's approval. The action plan clearly outlining the action to be taken for recovery of the irregularity including timeframe and method of recovery
- (b) Submitting the action plan on the irregularity to the Civil Service Commission
- (c) Hold a hearing of the head of the Government Agency on the irregularity by the Civil Service Commission
- (d) withholding an appropriation of the Government Agency with the permission of the Civil Service Commission
- (e) Subjecting a commitment and payment of some or all expenditures to the prior authorization of the Minister for Finance.

5.3. Where the action as outlined in Section 5.2 has been carried out by the Minister or Ministry, the action plan as required under Section 5.2 (b) shall be submitted to the Council of Ministers

**6. Administrative Misconduct**

6.1. A public official commits the offence of financial misconduct if that public official—

- (a) is designated under Part II of the PMFA Act for an appropriation and willfully or negligently and in respect of that expenditure appropriation
  - (i) fails to act with regularity and propriety in respect of any expenditure appropriation for which he or she is responsible; or
  - (ii) makes or permits to be made any expenditure which is unauthorized, irregular, negligent or reckless or which in any other respect does not conform to the authority which governs it;
- (b) is delegated authority and responsibility in terms of section 6(4) of the PFM Act to exercise a power or perform a duty and willfully or negligently fails to exercise that power or perform that duty;
- (c) The Minister is delegated authority and responsibility in terms of Section 5 (2) of the PFM Act to exercise a power or perform a duty and willfully or negligently fails to exercise that power or perform that duty.
- (d) willfully breaches or in any other way fails to comply with any regulations made or instruction issued by the Minister where that regulation or instruction provides that such breach or failure constitutes financial misconduct;
- (e) as the person responsible for administering a Government Agency, willfully or negligently—
  - (i) fails to comply with the requirements of the PFM Act; or
  - (ii) makes or permits to be made any expenditure which is unauthorized, irregular, negligent or reckless, or which in any other respect does not conform to the authority which governs the expenditure; or
- (f) willfully or negligently omits to report any prima facie instance of financial misconduct by any public officer to the appropriate authority.

6.2. An officer guilty of an offence under paragraph 6.1 shall be liable on conviction—

(a) to a fine or to imprisonment as determined by a court of law; or

(b) any court convicting an officer of an offence under this section may in addition to or in substitution for any fine to which the officer may be liable under this paragraph, order the officer to make restitution to the Hirshabelle State of Somalia to the extent of any loss sustained by the Hirshabelle State of Somalia by reason of the offence.

6.1. An order for restitution made under paragraph 6.2 shall be enforceable as if it were an order for the payment of a fine.

6.2. Notwithstanding the provisions of any other law, financial misconduct shall be a ground for dismissal or suspension, or other sanction against a public official, except dismissal or suspension in the case of a minister who shall be subject to any ministerial code of the time being in force.

## **7. Power to Fine**

7.1. Where it is decided that disciplinary action should be taken against the public official considered to be responsible for the loss of public money or loss or damage to Government Property, the matter shall be referred to the Minister. If a surcharge for the sanction is to be applied, the Minister shall determine the amount of the surcharge—

(a) bearing in mind the amount of the loss sustained by the Hirshabelle State of Somalia; and

(b) in accordance with Part VIII of the Ordinance.

7.2. The Minister shall, in writing, notify the public official concerned of the decision, and send a copy of the notification to the relevant Accounting Officer, the Treasury Director/Accountant General and the Auditor General.

7.3. The notification shall call upon the public officer concerned, within one (1) month from the date the notification is received by the public official, to show cause why he or she should

7.4. Where:

- (a) a loss of or deficiency in public money or public property occurs that has been advanced to or was under the control of a public officer; or
- (b) a loss or destruction of or damage to public property or other property occurs while the property was in the care of a public officer; or
- (c) a public officer has failed to collect any moneys owing to the Government; or
- (d) a public officer is or was responsible for any improper payment of any public moneys or for any unauthorized expenditure in excess or for the payment of any payment of public moneys not duly vouched, and the Minister is satisfied after due enquiry, that the negligence or misconduct of the public officer caused or contributed to the loss, deficiency, failure or impropriety—
  - (i) the cost to the Government resulting from the failure or impropriety; or
  - (ii) the amount of any loss or deficiency; or
  - (iii) the value of the property lost or destroyed; or
  - (iv) the cost of replacing or repairing the damage to that property, as the case may be, shall be a debt due to the Government and may be recovered from the public official by surcharge by the Minister and may be deducted from any salary or any other amount due by the Government to the public officer:

7.5. Provided that—

- (a) the Minister in determining the sum to be fined shall take due account of the ability of the said public official to pay the fine without undue hardship; and
- (b) the collection of the fine shall be limited to fifty percent of the gross annual salary or annual pension collectable by installment deduction over a period of two years and, in the case of termination, fifty percent of all terminal benefits otherwise payable to the said public officer.

7.6. Where the person fined is due to be paid any moneys of whatever description by the Government, other than by way of salary or pension or related terminal benefit, the Minister may require the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he or she considers just and reasonable. The sum surcharged and collected shall not in any case exceed the amount of the cost, loss or deficiency.

7.7. Where the negligence or misconduct of a public official is not the sole cause of any cost, loss, deficiency, damage or destruction resulting in an action under paragraph 7.1, the amount recoverable from the public officer may be restricted to only the cost of repaying, replacing or repairing the cost, loss, deficiency, damage or destruction that the Minister considers, after due enquiry, to be just and equitable, having regard to the contribution made by the public official to that cost, loss, deficiency, damage or destruction.

7.8. In this section, a reference to a public official includes a person who has been a public official in any Government Agency. .

## **8. Notification of Fine**

8.1. The Minister shall cause the person fined and the Treasury Director/Accountant General and the Auditor General to be notified in writing of any surcharge made under the immediately preceding section.

8.2. The Treasury Director/Accountant General shall notify the person surcharged of the timing and method of recovery of the surcharge.

8.3. Recovery action shall be commenced as soon as possible after the Treasury Director/Accountant General receives notification under paragraph 7.1.

## **9. Appeal against Surcharge**

9.1. Any person who believe they are unfairly treated by the imposition of any fine made against him or her under this Regulation shall have the right of appeal to the Civil Service Commission (CSC) within a period of one month (or such longer period as the Minister may allow) from the date on which he or she is notified of the surcharge.

9.2. The Minister, after making or causing to be made such investigation as he may deem to be necessary, may confirm the surcharge or direct that the person surcharged be released wholly or in part from the surcharge as may appear to him or her to be reasonable.

9.3. Any surcharge moneys already recovered from the aggrieved person, to the appropriate value, shall be returned by the Treasury Director/Accountant General as necessary.



## **10. Withdrawal of Fine**

10.1. The Minister may only with the approval of the Civil Service Commission (CSC) withdraw any fine in respect of which a satisfactory explanation is received or if it otherwise appears to him that no fine should have been made and in that event the Minister shall notify all the persons notified of the decision of the Civil Service Commission (CSC) to withdraw the fine.

## **11. Recovery of Fine**

11.1. The Treasury Director/Accountant General, on being notified of a fine made under this Regulation, shall cause the amount of the fine to be recovered from the person fined in such a manner as the Minister directs.

11.2. No recoveries shall be made under paragraph 11.1 until after the expiration of the period allowed under paragraph 9.1 for the lodging of any appeal, and where the person fined appeals under the provisions of that section, no recoveries shall be made until and unless the fine has been confirmed or otherwise determined.

11.3. The amount of the fine made under the provisions of this Regulation shall be recovered as the Minister may direct and may be deducted from any salary, pension or other payroll costs of the person fined: Provided that—

- (a) no monthly installment payable in respect of a fine shall exceed one quarter of the gross monthly salary of the person fined; and
- (b) where the person fined is due to be paid any moneys by the Government other than by way of salary or other emolument, the Minister may require the amount of any fine imposed on that person to be deducted from such moneys in whole or in part as he considers just and reasonable.

11.4. Nothing in this section shall prejudice the right of the Hirshabelle State of Somalia to sue for and recover the amount of any fine as a civil debt due to the Government

**12.0 Entry into Force**

12.1 This Regulation is deemed to have entered into force on date issued of **31/03/2018**

**Mr. Mohamed Mohamud Abdulle**

Minister of Finance and Economic Development

Hirshabelle State of Somalia

