



MERAFONG FRAUD PREVENTION PLAN

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1. Introduction

Merafong City Local Municipality subscribes to the principles of good corporate governance, which requires the conducting of business in an honest and transparent fashion.

Consequently Merafong City is committed to fighting fraudulent behavior at all levels within the Municipality.

Merafong City cherishes the following values:

- Absolute integrity
- A culture of honesty
- Loyalty
- Professionalism
- Acceptance of responsibility and accountability
- A positive public image
- Confidence in the public
- Striving for and maintaining credibility
- High standards of service delivery
- A sense of pride in belonging to Merafong City
- Sanctioning bad and rewarding good behavior
- All other positive attributes contributing towards sound ethical standards

The fraud plan is premised on the Municipality's core ethical values driving the business of Merafong City, the development of its systems, policies and procedures with rate payers, the public and other stakeholders and decision making by individual Managers representing the Municipality. This means that in practice all departments and other business units of Merafong City and even external stakeholders must be guided by the Fraud Plan as the point of reference for their conduct in relation to Merafong City.

Further, the Fraud Plan for Merafong City is intended to update the existing Fraud Response Plan that is already in place.

In addition to promoting ethical conduct within Merafong City, the Fraud Prevention Plan is also intended to assist in preventing, detecting, investigating and sanctioning fraud and corruption. This dynamic document details the steps, which have been, and will continually be taken by Merafong City to promote ethical conduct and address fraud and corruption.



1.1 Statement of attitude to Fraud

Dr. Martin Luther King Jr once said “*he who passively accepts evil is as much involved in it as he who perpetrates it*”. Fraud represents a significant potential risk to municipal assets, service delivery efficiency and reputation. Merafong City Local Municipality (MCLM) will not tolerate corrupt or fraudulent activities, whether internal or external to the municipality and will vigorously pursue and prosecute any parties by all legal means available, which engage in such practices or attempt to do so.

2. Fraud and Corruption

Fraud and corruption manifests in a number of ways and in varying degrees of intensity. These have been explained above, but are again emphasized here broadly:

- Unauthorized private use of the municipal assets, including vehicles
- Falsifying travel and subsistence claims
- Conspiring unfairly with others to obtain a tender
- Disclosing proprietary information relating to a tender to outside parties
- Accepting inappropriate gifts from suppliers
- Employing a family members or close friends
- Operating a private business in working hours
- Stealing equipment or suppliers from work
- Accepting bribes or favors to process requests
- Accepting bribes or favors for turning a blind eye to a service provider who does not provide an appropriate service
- Submitting or processing false invoices from contractors or other service providers and
- Misappropriation fees received from customers and avoiding detection by not issuing receipts to those customers
- Receiving so-called kickbacks- unlawful payments as a quid pro quo (you scratch my back I scratch yours) for business opportunities.

3. Fraud and Corruption control strategies

The approach in controlling fraud and corruption is focused into 3 areas namely:

- Structural strategies
- Operational strategies
- Maintenance strategies



3.1 Structural strategies

Structural strategies represent the actions to be undertaken in order to address fraud and corruption at the structural level.

3.1.1 Responsibilities for fraud and corruption risk management

The following section outlines the fraud and corruption risk management responsibilities associated with different roles within MCLM.

3.1.1.1 Accounting Officer

The Accounting Officer bears the ultimate responsibility for fraud and corruption risk management within MCLM. This includes the coordination of risk assessments, overseeing the investigation of suspected fraud and corruption, and facilitation for the reporting of such instances.

3.1.1.2 Risk Management Committee (RMC)

The role of the RMC is to oversee the MCLM's approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties. This committee will be chaired by one of the independent members of the Audit Committee. The various business divisions should have representation on this committee. Internal Audit is compulsory to attend to RMC meeting.

RMC will meet on regular basis to discuss inter alia:

- Progress made in respect of implementing the fraud prevention policy
- Reports received by MCLM regarding fraud and corruption incidents with the view to making any recommendations to the Accounting Office and the Audit Committee.
- Reports on all investigations initiated and concluded and
- All allegations received via the hotline

3.1.2 An ethical culture

MCLM is required to conduct itself in an ethical and moral way. Ethics are concerned with human character and conduct and deal with questions of right and wrong, appropriate and inappropriate behavior and what constitutes good or evil. Ethical conduct is based on a set of principles referred to as values or norms. The collective ethical conduct of all the individual employees and political office bearers of MCLM reflects MCLM's ethical conduct. In this regard, the highest standards of ethics are required by employees and political office bearers when fulfilling their duties.

Good governance indicates that MCLM should develop codes of conduct and ethics as well as rules of order as part of its corporate governance frameworks. All employees and political office bearers are expected to abide by these codes.



3.1.3 Code of ethics

The purpose of the code of ethics is to state the values to which the MCLM is committed to and to establish agreement about our ethical principles and standards of acceptable behavior within our work environment.

It is therefore of utmost importance for fraud policy to be read in conjunction with Ethics policy.

3.1.4 Senior management commitment

Senior management is to be committed to eradicating fraud and corruption and ensuring that MCLM strives to be perceived as ethical in all its dealings with the public and other interested parties. In this regard, senior management, under the guidance of the Accounting Officer, will ensure that it does not become complacent in dealing with fraud and corruption. Furthermore, senior management will ensure that all employees and stakeholders are made aware of its overall anti- fraud and corruption strategies through various initiatives of awareness and training.

3.1.5 Assessment of fraud and corruption risk

MCLM under the guidance of the Accounting Officer and the Chairperson of the RMC will conduct annual fraud and corruption risk assessments to identify potential fraud and corruption risk exposures to MCLM. This process will ensure that actions to address the identified fraud and corruption risk exposures will be implemented to mitigate these exposures.

The above will be formulated into “Fraud Risk Assessment” and which will provide an indication of how fraud and corruption risks are manifested and a “Fraud and Corruption Risk Register” which will prioritize the fraud and corruption risks and indicate actions to mitigate these risks.

3.1.6 Employee awareness

The main purpose of fraud and corruption awareness workshops/ training is to assist in the prevention, detection and reporting of fraud and corruption by raising the level of awareness as to how fraud and corruption is manifested in the workplace. In this regard, all employees and political office bearers will receive training on the following:

- Fraud Prevention Policy
- Code of Conduct and Ethics
- Whistle Blowing
- How to respond to fraud and corruption and
- Manifestations of fraud and corruption in the workplace
- It is the responsibility of the Risk Management unit to provide awareness to employees and political office bearers



3.2 Operational strategies

3.2.1 Internal Controls

Internal controls are the first line of defense against fraud and corruption. Whilst internal controls may not fully protect MCLM against fraud and corruption, they are essential in the overall Anti-Fraud and Corruption Strategy.

All areas of operations require internal controls, for example:

- Physical controls (safeguarding of assets)
- Authorization controls (approval of expenditure)
- Supervisory controls (supervising day-to-day issues)
- Analysis of data
- Monthly and annual financial statements
- Monthly Reconciliation of bank statements
- Monthly Reconciliation of vote accounts
- Stock takes on a regular basis where applicable
- Assets counts
- Computer access controls
- Policies and procedures

The Internal Audit function will be responsible for implementing an internal audit program which will incorporate steps to evaluate adherence to internal controls.

3.2.2 Prevention strategies

A number of combined initiatives result in an overall preventative environment in respect of fraud and corruption. These include the following but not exhaustive.

3.2.2.1 Employee awareness

Employee awareness of MCLM's Fraud Prevention Policy and the manifestation of fraud in the workplace all assist in the creation of an environment which may be considered to be hostile to a would-be transgressor.

3.2.2.2 Pre-employment screening

Pre-employment screening will be carried out for all appointments and evidence of such screening will be maintained by the Human Resources & Development. Consideration should be given to the following pre-employment screening:

- Verification of identity
- Policy criminal history
- Reference checks with the two most recent employers
- A consideration of any gaps in employment history and the reasons for those gaps



- Verification of formal qualifications claimed.

Pre-employment screening will cover all new and promoted employees including those with administrative responsibilities or computer access. The screening will be performed by a person/ people nominated by the Human Resources Manager in conjunction with the Accounting Officer to ensure that screening is consistent.

Where an employee is promoted into a management position and has not been screened during the course of the previous three years, the applicant will be re-screened.

3.2.2.3 Recruitment Procedures

Recruitment will be conducted in accordance with the requisite recruitment procedure. It will be a transparent process and all appointments will be confirmed only due recommendations. Any person, involved in any decision-making process, who may have a conflict of interest, must declare such a conflict in writing to the HR Manager and withdrawn from any further procedures.

3.2.2.4 Fraud Prevention Plan

The actions set out in this Plan are all focused at mitigating the risk of fraud and corruption in MCLM.

3.2.2.5 Disclosure of Interest

All MCLM officials and political office bearers of MCLM will be required to disclose their specific personal assets and business interests on an annual basis. The financial disclosures form must be used for this purpose. Corporate Support Services will be the custodian of such forms.

Also a gift register is in place for declaration of gifts above R350 by employees and political office bearers. If all employees and political office bearers received a similar gift, there will be no need to declare individually.

3.2.3 Detection Strategies

Detection of fraud and corruption may occur through:

- Vigilance on the part of employees, including line management
- The Internal Audit function
- Ad hoc management reviews
- Anonymous reports or whistle blowing
- The application of detection techniques



3.2.3.1 Internal Audit

As part of the detection strategy, the Internal Audit Policy will cover the following:

- Surprise audits: unplanned audits conducted on specific business processes throughout the year
- Post- transaction reviews: a review of transactions after they have been processed and completed can be effective in identifying fraudulent or corrupt activity. In addition to the possibility of detecting fraudulent transactions, such as strategy can also have a significant fraud prevention effect as the threat of detection may be enough to deter a staff member who would otherwise be motivated to engage in fraud and corruption.
- Management accounting reporting review: using relatively straightforward techniques in analyzing MCLM’s management accounting reports, trends can be examined and investigated which may be indicative of fraudulent conduct. Some examples of the types of management accounting reports that can be utilized on a compare and contrast basis are:
 - Budget reports for each section
 - Exception reports

3.2.3.2 External Audit

MCLM acknowledges that the external audit function is an important control in the detection of fraud. The Accounting Officer must ensure that due consideration is given, by the auditors, ISA 240 “*The Auditors’ Responsibility to Consider Fraud in the Audit of the Financial Statement*”.

3.2.3.3 Whistle Blowing

MCLM has implemented measures for reporting Fraud. These measures are posted in INTRANET and the website. The measures are as follows:

- Merafong City Hotline: Tel 0800 004 004, Fax 0800 200 796, email Fraud@kpmg.gov.za
- National Anti-Corruption Hotline 0800 701 701
- The Gauteng hotline number 0860 428 8364
- The Gauteng hotline can also be reached on:
 - ✓ Email: hotline@gauteng.gov.za
 - ✓ Fax: 011 429 3222
 - ✓ Post: Private Bag X 115 Marshalltown, Johannesburg, 2107



3.2.3.4 Abuse of whistle blowing

- All managers should discourage employees or other parties from making allegations that are falsely malicious. Where such allegations are discovered, the person who made the allegations must be subjected to firm disciplinary action or, in the case of external parties other appropriate action.
- The municipality will take action against any party making non-bona fide “strategic” allegations, who seek to misuse the available protections for personal advantage, or to damage the reputations or interests or interests of other individuals or organizations’ or simply to cause mischief by way of revenge-taking against their (*former*) employer. This is to prevent the abuse of this policy to gain an advantage.
- Making a disclosure knowing it to be false, will be regarded as misconduct, and treated as a disciplinary offence. A strategic disclosure about wrongdoing in which the whistle blower was personally involved, in order to seek to escape the consequences, should be protected only in relation to any retaliation for making the disclosure, not for the disclosed misconduct itself.

3.2.3.5 Protection of whistle blowers

- The municipality will protect the rights of whistle blowers to prevent victimization by fellow employees or managers in contravention of the Protected Disclosures Act, Act 26 of 2000.
- In cases where the decision making processes, such whistle blowers will be referred to the Provincial or National departments for further investigations

3.2.4 Response strategies

3.2.4.1 Reporting fraud and corruption- a whistle blowing mechanism

One of the key obstacles to fighting fraud and corruption is the fear by employees of being intimidated to identify or “blow the whistle” on fraudulent, corrupt or unethical practices witnessed in the workplace. Those who often do “blow the whistle” end up being victimized and intimidated. For this reason, MCLM will develop a whistle blowing mechanism setting out the detailed procedure which must be followed in order to report any incidents of fraud and corruption. This mechanism will be designed to comply with the provisions of the Protected Disclosures Act, in particular the following sections:

- Section 2- the aims of the Act
- Section 3- protection of employees making protected disclosures
- Section 5- protected disclosures to a legal advisor
- Section 6- protected disclosures to an employee
- Section 7-protected disclosures to an MEC
- Section 8- protected disclosures to certain institutions and
- Section 9- what constitutes protected disclosure.



Any suspicion of fraud and corruption will be treated seriously and will be reviewed, analyzed and if warranted, investigated. If an employee or political office bearer becomes aware of a suspected fraud, corruption or any irregularity or unethical behavior, such issues should be reported in terms of a whistle blowing mechanism.

3.2.4.2 Investigating Fraud and corruption

Dealing with suspected fraud and corruption

In the event that fraud and corruption is detected or suspected investigations will be initiated and if warranted, disciplinary proceedings, prosecution or action at the recovery of losses will be initiated.

Investigations

Any reports of incidents of fraud and/or corruption will be confirmed by an independent investigation. Anonymous reports may warrant a preliminary investigation before any decision to implement an independent investigation is taken.

Investigations will be undertaken by appropriately qualified and experienced persons who are independent of the section where investigations are required. This may be a senior manager within MCLM itself, an external consultant or a law enforcement agency. All investigations performed and evidence obtained will be in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations are paramount.

Any investigation initiated must be concluded by the issue of a report by the person/s appointed to conduct such investigations such reports will only be disseminated to those persons required to have access thereto in order to implement whatever action is deemed appropriate as a result of the investigation.

Investigations may involve one or more of the following activities:

- Interviewing of relevant witnesses, internal and external, including obtaining statements where appropriate
- Reviewing and collating documentary evidence
- Forensic examination of computer systems
- Examination of telephone records
- Enquiries from Departments and other agencies (subject to the granting of appropriate approval/Court orders)
- Enquiries with other third parties
- Data search and seizure
- Expert witness and specialist testimony



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- Tracing funds/assets/ goods
- Liaison with the police or other law enforcement or regulatory agencies
- Interviewing persons suspected of involvement in fraud and corruption and
- Report preparation

Any investigation into improper conduct within MCLM will be subject to an appropriate level of supervision by a responsible committee, having regard to the seriousness of the matter under investigation. The protection of employees, who disclose protected information under the protected disclosures Act, will be paramount.

The use of other agencies such as the Special Investigations Unit, Public Service Commission will also be engaged where appropriate.

Disciplinary proceedings

The ultimate outcome of disciplinary proceedings will be in terms of any applicable legislation.

Prosecution

Should investigations uncover evidence of fraud or corruption in respect of an allegation or series of allegations, such reports must be submitted to the South African Police Service in accordance with the requirements of all applicable acts.

MCLM will give its full co-operation to any such law enforcement agency including the provision of reports compiled in respect of investigations conducted.

Recovery action

Where there is clear evidence of fraud, corruption or negligence and there has been a financial loss to MCLM, recovery action, criminal, civil or administrative, will be instituted to recover any such losses.

In respect of civil recoveries, costs involved will be determined to ensure that the cost of recovery is financially beneficial.

Internal control review after discovery of fraud

In each instance where fraud is detected, line management will reassess the adequacy of the current internal control environment (particularly those controls directly impacting on the fraud incident) to consider the need for improvements.



The responsibility for ensuring that the internal control environment is reassessed and for ensuring that the recommendations arising out of this assessment are implemented will lie with the Accounting Officer and the HOD of the section concerned.

Should the Accounting Officer be involved in the act of fraud and corruption, Council will delegate the Audit Committee and the MPAC to investigate. The Political leadership will ensure that all due processes are followed.

Should the political office bearers be involved in fraud and corruption the relevant MEC will be engaged.

3.3 Maintenance Strategies

3.3.1 Review of the effectiveness of the Fraud Prevention Plan

MCLM will conduct a review of the Fraud Prevention Plan every three years or as an when circumstances necessitate review to ensure the effectiveness thereof. The Accounting Officer is ultimately accountable for this review. The annual Risk Management (ERM) Plan will comprise activities that will be undertaken in that specific financial year to give effect to the Fraud Prevention Plan.

3.3.2 Review and updating the Fraud Prevention Plan

A central part of any Fraud and corruption control Programme should involve an ongoing review of fraud and corruption risk exposures. Fraud and Corruption risk assessments will also be conducted annually at the same time as the review of the Fraud Prevention Plan. The Accounting Officer is ultimately accountable for the review of this plan.



4. Procedures for investigations

MCLM commits itself to investigate all reports of fraud and corruption or other improper conduct. The investigation of fraud and corruption can be complex and, at times, technical process and employees should be aware of the consequences of a poorly conducted investigation, including:

- Denial of natural justice
- Defamation
- Action against an employer for wrongful dismissal
- Inadmissible or poor control over the collection of evidence and
- Destruction of physical evidence.

To ensure that there is reasonable assurance that investigations are performed and reported properly, the Accounting Officer may use his discretion whether such fraud will be investigated internally or externally. The external consultant may be assisted by experienced personnel within MCLM who are sufficiently independent of the area or the matter under investigation. The Accounting Officer within his/her delegated authority will have the discretion to determine the appropriate external consultants and/or MCLM personnel to conduct investigations.

4.1 Handling a fraud allegation

Should a line manager/ HOD receive an allegation of fraudulent or corrupt activity, he or she will ensure that the Accounting Officer is advised at the earliest opportunity.

The Accounting Officer will appoint an appropriate Manager/ investigating officer (usually outside of the Section in which the alleged fraud and corruption has been identified) to conduct or co-ordinate an investigation into the allegations. The manager appointed to conduct or co-ordinate the investigation of an allegation of fraud may consult the Chairperson of the RMC on technical aspects of the investigation.

Upon receipt of an allegation of a suspected fraud, the immediate concern of the manager or investigating officer should be the preservation of evidence and the containment of loss.

4.1.1 Documentation of the results of the investigation

The appointed Manager is to submit a written report to the Accounting Officer detailing the circumstances and recommendations appropriate remedial action following the investigation.



4.1.2 Other matters

The Accounting Officer in conjunction with the Chairperson of the RMC will provide the details of fraud/ corruption or possible fraud/ corruption to the Audit Committee.

In each instance where fraud is detected, MCLM will reassess the adequacy of the internal control environment (particularly those controls directly impacting on the fraud incident) and consider the need for improvements. Where improvements are required, they should be implemented as soon as practicable. These will be incorporated in the report to the Audit Committee.

4.1.3 Reporting fraud to police and/ or external parties

The Accounting Officer will be responsible for reporting to the police, in circumstances in which there is evidence of fraud against:

- an employee/ volunteer of MCLM
- a political office bearer of MCLM
- a supplier to MCLM

Reporting fraud to the police for investigation will be subjected to the requirements as set out in all applicable acts.

Any decision not to refer an allegation of fraud to the police for investigation (where there is sufficient evidence to justify making such a report) will be referred to the Audit Committee and MPAC, together with the reasons for the decision.

Responsibility for the complaint statements lodged with Police will be assigned on a case by case basis by the Accounting Officer in consultation with the investigator.

4.2 Recovery and other remedies

MCLM is fully committed to actively pursue the recovery of any money or property lost through fraud, provided there is a strong prospect of a net benefit to MCLM from such action.

Where it is considered appropriate that the matter not be reported to the police, MCLM reserves its right to pursue a range of other remedies including appropriate disciplinary action. Any disciplinary action pursued will be done in accordance with the disciplinary procedures.



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Exit interviews and exit checklist procedures will be performed in the event of dismissal from MCLM for misconduct or fraud. This is necessary to ensure that factors contributing to misconduct and fraudulent activity by employees or political office bearers can be managed as a process to mitigate fraud risk.



A Regulatory Framework

A.1 Summary of statutory offences relating to dishonesty

A.1.1 Prevention and Combating of Corrupt Activities Act, 12 of 2004

The Prevention and Combating of Corrupt Activities Act (generally referred to as “PRECCA”) is aimed at the strengthening of measures to prevent and combat corrupt activities.

The Act refers to a wide range of offences relating to corrupt activities. In addition to specific offences, the Act also provides for the following:

- The provision of investigative resources
- The establishments of a register relating to persons convicted of corrupt activities
- Placing a duty on persons in a “position of authority” to report certain corrupt transactions; and
- Extraterritorial jurisdiction in respect of offences relating to corrupt activities.

As far as offences are concerned, the Act defines a general offence of corruption. In addition to the general offence, certain specific offences are defined relating to specific persons or specific corrupt activities.

The offences defined by the Act relate to the giving or receiving of a “gratification”. The term gratification is defined in the Act and includes a wide variety of tangible and intangible benefits such as money, gifts, status, employment, release of obligations, granting of rights or privileges and the granting of any valuable consideration such as discounts etc.

The general offence of corruption is contained in Section 3 of the Act. This section provides that any person who gives or accepts or agrees or offers to accept/receive any gratification from another person in order to influence such other person in a manner that amounts to:

- The illegal or unauthorized performed of such other person’s powers, duties or functions
- An abuse of authority, a breach of trust or the violation of a legal duty or a set of rules
- The achievement of an unjustified result or
- Any other unauthorized or improper inducement to do or not to do anything is guilty of the offence of corruption.



The Act defines specific offences relating to the following categories of persons:

- Public Officers
- Foreign Public Officials
- Agents

Members of Legislative Authorities

- Judicial Officers and
- Members of the Prosecuting Authority

The Act furthermore defines specific offences in respect of corrupt activities relating to the following specific matters:

- Witnesses and evidential material in certain proceedings
- Contracts
- Procuring and withdrawal of tenders
- Auctions
- Sporting events
- Gambling games or games of chance.

Section 34 of the Act places a duty on any person in a position of authority to report a suspicion of certain corrupt or illegal activities to a police official. These include certain offences of corruption created under the Act as well as fraud, theft, extortion and forgery where the amount involved exceeds R100 000. Failure to report such suspicion constitutes an offence.

“*Position of authority*” is defined in the Act and includes a wide range of persons in authority in both public and private entities.

Offences under the Act are subject to penalties including imprisonment for life and fines of up to R250 000. In addition, a fine amounting to five times the value of the gratification involved in the offence may be imposed.

Section 17 of the Act provides that a public officer who acquires or holds a private interest in any contract, agreement or investment connected with the public body in which he/she is employed, is guilty of an offence unless:

- The interest consists of shareholding in a listed company
- The public officer’s conditions of employment do not prohibit him/her from acquiring such interest; or



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- In the case of attender process, the said officer's conditions of employment do not prohibit him/her acquiring such interests as long as the interests are required through an independent tender process.



5. Definitions for terms used in the Plan

“Accounting Officer” means:

The Municipal Manager

“Audit Committee” means:

Council committee appointed in terms of the Municipal Finance Management Act. It is an advisory committee to the Accounting Officer, Management and Political office bearers.

“Corporate Governance” means:

Aligning as nearly as possible and in a fair, transparent, accountable manner, the interests of the political structures and administration of MCLM with those of the community (residents, ratepayers and the various groups involved in MCLM affairs).

“Corruption” means:

Corruption is defined according to the Prevention and Combating of Corrupt Activities Act No 12 of 2004 of South Africa;

Any person who directly or indirectly-

- a) Accepts/ agrees/ offer to accept any gratification form any other person; whether for benefits of himself/ herself/ for the benefit of another person*
- b) Gives/ agrees/ offers to give any other person any gratification, whether for the benefit of that person/ for the benefit of another person in order to personally/ by influencing another person so to act in a manner-*
 - i. That amounts to:*
 - aa) illegal, dishonest, unauthorized, incomplete or biased*
 - bb) misuse or selling of information or material acquired in the course of the exercise, carrying out of a constitutional statutory, contractual or any other legal obligation*
 - ii. That amounts to:*
 - aa) the abuse of a position of authority*
 - bb) a breach of trust*
 - cc) the violation of legal duty of a set of rules*
 - iii. Designed to achieve unjustified results*



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- iv. *That amounts to any other unauthorized or improper inducement to do/ not to do anything is guilty of the offence of corruption*

Actions constituting corruption are:

- i. *Bribery*
- ii. *Extortion*
- iii. *Abuse of power*
- iv. *Conflict of interest*
- v. *Favoritism*
- vi. *Nepotism*

“Fraud” means:

In South Africa, the Common Law offence of fraud is defined as “the unlawful and intentional act or omission by which misrepresentation is made which causes actual and or potential prejudice to another, whether or not there is personal benefit to the perpetrator.”

Actions constituting to fraud are:

- *Embezzlement*
- *Misappropriation*
- *Falsification & Forgery*
- *Overstatement of assets & income to conceal unauthorized transactions*
- *Understatement of liabilities & expenses to conceal illegal transactions or*
- *False or omitted disclosure*

“Gratification” means:

- i. *Money, whether in cash or otherwise.*
- ii. *Any donation, gift loan, fee, reward, valuable security, property or interest in property of any description, movable or immovable or any similar advantage, paid holidays*
- iii. *The avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantages*
- iv. *Any office status, honor employment, contact of employment*
- v. *Any payment, release, discharges of a liability, liquidation of a loan/ obligation*

“Line Management” means:

Any staff members in level 1-3, that exercise a management or supervisory function



“MPAC” means:

Municipal Public Accounts Committee entrusted with political accountability and legislative oversight

“Policy” means:

The Fraud Prevention Policy

“Senior Management Team” means:

The team consisting of the Municipal Manager, the Heads of Departments and other delegated Managers or any person

“Theft” means:

The unlawful misappropriation of movable property or money with the intention to steal



6. Regulatory Framework

A.1.2 Prevention of Organized Crime Act, 121 of 1998 (POCA)

The Prevention of Organized Crime Act, as amended, (generally referred to as “POCA”) contains provisions that are aimed at achieving the following objectives:

- The combating of organized crime, money laundering and criminal gang activities
- The criminalization of conduct referred to as “racketeering”
- The provision of mechanisms for the confiscation and forfeiture of the proceeds of crime
- The creation of mechanisms for the National Director of Public Prosecutions to obtain certain information required for purposes of an investigation and
- The creation of mechanisms for co-operation between investigators and the South African Revenue Services (SARS).

Section 4 of the Act defines the “*general*” offence of money laundering and provides that a person who knows, or ought reasonably to have known, that property is, or forms part of the proceeds of unlawful activities, commits an offence if he commits an act in connection with that property which has the effect or is likely to have the effect of concealing the nature and source thereof.

Section 5 of the Act creates an offence if a person knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and provides assistance to such other person regarding the use or retention of such property.

Section 6 of the Act creates an offence if a person knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and acquires, uses or possesses such property.

The above offences are regarded as very serious and the Act contains exceptionally harsh penalties relating to these offences. A person convicted of one of the above offences is liable to a maximum fine of R100 million or to imprisonment for a period not exceeding 30 years.



A.1.3 Financial Intelligence Centre Act, 38 of 2001 (FICA)

The Financial Intelligence Centre Act, as amended, (generally referred to as “FICA”) was signed by the President in November 2001. Its provisions were implemented overtime, commencing during January 2002.

The Act (FICA) establishes a Financial Intelligence Centre and a Money Laundering Advisory Council. The purpose of these entities is to combat money laundering activities.

FICA imposes certain reporting duties and compliance obligations.

These obligations include:

- A duty to identify clients
- A duty to retain records of certain business transactions
- A duty to report certain transactions and
- The adoption of measures to ensure compliance, namely, the implementation of so-called “internal rules”, provision of training etc.

Regarding the reporting of suspicious transactions, FICA makes provision for duty to report “*suspicious or unusual transactions*”. In this regard it provides that any person who carries on a business or who manages is in charge of or is employed by a business or who knows or suspects certain facts, has a duty to report their knowledge or suspicion to the FICA within a prescribed period. Matters that require reporting include knowledge or suspicion of the following:

- The receipt of proceeds of unlawful
- Transactions which are likely to facilitate the transfer of proceeds of unlawful activities.
- Transactions conducted to avoid giving rise to a reporting duty under FICA;
- Transactions that have no apparent business or lawful purpose
- Transactions relevant to the investigation of tax evasion; or
- The use of a business entity for money laundering purposes

A person who fails to make a report as required commits an offence and is liable to a fine not exceeding R10 million or imprisonment not exceeding 15 years.



A1.4 Protection of Constitutional Democracy Against Terrorist and Related Activities Act, Act 33 of 2004 (POCDATARA)

On May 20, 2005, the Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA) came into effect criminalizing terrorist activity and terrorist financing and gave the government investigative and asset seizure powers in cases of suspected terrorist activity.

POCDATARA provides for two new reporting obligations under section 28A and section 29 of FICA. The Money Laundering Control Regulations under FICA have also been amended, with effect from 20 May 2005, for this purpose. The amended regulations now provide for detailed reporting related to terrorist financing, under new sections 28A and section 29 of FICA.

The POCDATARA amends section 29 of FICA to extend the reporting of suspicious and unusual transactions to cover transactions relating to “*property which is connected to an offence relating to the financing of terrorist and related activities*” or to “*the financing of terrorist and related activities*”. The POCDATARA introduces a new section 28A of FICA that requires the reporting of any property that is associated with terrorist and related activities to the FICA.



A.2 Statutes combating fraud and corruption

A.2.1 Protected Disclosures Act, 26 of 2000

The Protected Disclosures Act was promulgated to facilitate reporting by employees (whistle blowers) of fraud, corruption or other unlawful or irregular actions by their employer(s) or co-employees without fear of any discrimination or reprisal by their employers or co-employees.

Any employees who has information of fraud, corruption or other unlawful or irregular action(s) by his/her employer(s) or co-employees can report such actions, provides that he/she has information that:

- A crime has been, is being or likely to be committed by the employer or employee(s)
- The employer or employees has/have failed to comply with an obligation imposed by law
- A miscarriage of justice has or will likely occur because of the employer's or employee(s) actions;
- The health or safety of an individual has been, is being or is likely to be endangered
- Unfair discrimination has been or being practiced; or
- Any of the above has been, is being or is likely to be concealed.

The Act prohibits the employer from:

- Dismissing, suspending, demoting, harassing or intimidating the employee;
- Subjecting the employee to disciplinary action;
- Transferring the employee against his or her will;
- Refusing due transfer or promotion
- Altering the employment conditions of the employee unilaterally
- Refusing the employee a reference or providing him/her with an adverse reference;
- Denying appointment;
- Threatening the employee with any of the above; or
- Otherwise affecting the employee negatively if the disclosure is made in terms of the Act.



7. Approval and Adoption

1. LJ MAKORO Signature _____

RISK MANAGEMENT COMMITTEE CHAIRPERSON Date _____

2. MN MOKOENA Signature _____

MUNICIPAL MANAGER Date _____

3. CLLR S. M MOGALE LETSIE Signature _____

EXECUTIVE MAYOR Date _____