

# MOSES KOTANE LOCAL MUNICIPALITY



## ANTI-FRAUD AND CORRUPTION POLICY

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# **ANTI FRAUD AND CORRUPTION POLICY**

## **1. PURPOSE OF THE POLICY**

The purpose of this policy is to provide guidelines within the existing legal framework, for dealing with fraud and corruption within the Moses Kotane Local Municipality. This policy serves as a protection to the municipality against criminal conduct such as any acts of fraud, corruption, theft and acts of misconduct. It is mainly aimed at creating a proactive fraud intolerant culture within the municipality in order to protect the municipality. It serves as a defence and reactive mechanism that can be used to counter or to defend the municipality against any acts of fraud and corruption. The implementation of this policy is intended to reduce the losses that the municipality may suffer as a result criminal acts such as fraud, forgery and uttering, corruption, embezzlement, extortion, bribery and theft. This policy also applies to acts of misconduct such as nepotism, favouritism, cronyism, abuse of power, abuse of privileged information, maladministration, conflict of interests, abuse of municipal assets and collusion. For the purposes of this policy, the common denominator between the criminal acts and acts of misconduct as outlined above is the unjust enrichment or benefits accruing to the perpetrators. This policy endeavours to assist in the creation of an environment where fraud and other crimes of dishonesty are efficiently, economically and effectively prevented, detected, investigated and reported and consequent recovery of losses and action against guilty perpetrators.

## **2. APPLICATION OF POLICY**

This policy shall apply to all municipal officials, councillors, service providers, suppliers, authorised agents, nominees and other stakeholders, or any other person who is involved or deals with the Municipality, directly or indirectly or otherwise. Maximum effect can only be achieved by rolling out the policy to these stakeholders.

The policy not only encourages staff members to report crimes such as acts of fraud, corruption, theft and acts of misconduct within the municipality, it also serves as a guide to staff members on how to report these acts when they occur. In order to contextualise this policy, the roles of employees, councillors and managers has been outlined and hopefully this will assist the said councillors and employees to identify possible shortcomings in their day to day duties and also what roles they are playing in ensuring the success in the implementation of the Moses Kotane Anti- Corruption Strategy and Fraud and Corruption Policy. The policy is also designed to promote ethical and professional behaviour from these critical municipal stakeholders. The policy is designed to deal with acts of misconduct, that may not necessarily amount to fraudulent or corrupt behaviour hence mismanagement, irregularities, reckless and negligent

behaviour are to be prevented, detected, investigated and where applicable disciplined in terms of this policy.

### **3. OBJECTIVES**

- ✓ Early detection of fraud can be achieved hence minimizing financial losses to the municipality
- ✓ The municipality has a effective policy to manage and detect fraud and corruption
- ✓ The municipality's policies are aligned to legislation and are therefore legitimate
- ✓ All staff members and councillors are familiarised with the anti-corruption and fraud prevention policy that they must abide by at all times.
- ✓ The municipality must adopt a zero tolerance approach against individuals who are not abiding by their codes of conduct and who commit acts of fraud and corruption.

### **4. CUSTODIANS OF THE POLICY**

The Municipal Manager is responsible for educating management, employees and councillors about the importance of the policies and procedures in respect of the prevention and detection of fraud and corruption within the municipality. All councillors, managers and employees need to apply effort and commitment in maintaining the values and principles within Moses Kotane Local Municipality by supporting the measures to prevent and combat fraud and corruption. The Municipal Manager must ensure as part of a broader education campaign that all stakeholders are responsible for preventing and detecting fraud and implementing effective internal control systems. The Municipal Manager must appoint a 'committee', which is made up of senior managers and any other committed individuals, preferably senior managers of each department to monitor the compliance and implementation of the policy. This committee shall also champion and promote the implementation of fraud prevention and detection strategies in the municipality as a whole. These champions shall also report developments in their respective departments in connection with fraud prevention and detection to the Municipal Manager from time to time and shall also promote a culture of openness and constructive engagement with all stakeholders in the implementation of the anti fraud and corruption policy under the leadership and direction of the municipal manager. This can be achieved by ensuring that there are mechanisms in place within the municipality, to assess the risk of fraud regularly, to promote good ethics, ensuring that, a system of controls and checks and balances exists as envisaged in the Municipal Finance Management Act especially within the finance and accounting department and practices of the municipality and to educate employees about fraud and corruption prevention and detection.

The Municipality shall encourage the managers to promote integrity, honesty, loyalty, transparency, accountability and good leadership qualities amongst the staff member, thus enhancing the image and the credibility of the municipality in the eyes of the public. The staff members have a responsibility to report acts of fraud and suspected corruption.

The Municipal Manager shall be responsible for ensuring that all staff members are familiar with their roles with regards to abiding by the Code of Conduct. The mayor and the councillors should be expected to also abide by their Code of Conduct.

## **5. ROLE OF MANAGEMENT**

In terms of the Municipal Finance Management Act, the role of the Municipal Manager is to ensure that the systems of financial management and internal controls are diligently carried out, effectively, efficiently and transparently as well as to safeguard the municipal assets against unauthorised, irregular or fruitless and wasteful expenditure.

Where the Municipality intends to procure goods or services from suppliers or service providers, section 217 of the Constitution stipulates that when an organ of the state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

It is in this instance where conflicts of interest may arise resulting in a manager deviating from his/her duties. In terms of the Municipal Systems Act 2000 and the Municipal Finance Management Act, it is stipulated that the Managers of the Municipality are expected to act in good faith on behalf of, and in the best interest of the Municipality.

## **6. THE ROLE OF COUNCILLORS**

Municipal Councillors act as intermediaries between the municipality and the community. The Municipality consists of a number of councillors determined by the MEC for Local Government whether the said municipality is a Metropolitan, District or a Local Government Municipality.

In term of Sec 19 of the Municipal Structure's Act, the municipal council must strive to achieve its objectives as laid out in Sec 152(1) of the Constitution. The Constitution is the supreme law of the Republic of South Africa and it provides that Local Government must

- provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;

- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

In encouraging the involvement of communities and community organisations in the matters of local government, Sec 19(2) of the Local Government: Municipal Structures Act, the municipal council must annually review

- the needs of the community;
- its priorities to meet those needs;
- its process for involving the community;
- its organisational and delivery mechanism for meeting the needs of the community; and
- its overall performance in achieving the objectives referred to in Sec 152 of the Constitution.

The municipal councillors are more involved in matters concerning the community, hence through these involvements, the point of contact between the Councillors and the members of the public give rise to the development of relationships. This may create a room where exchanges of gifts and benefits can easily occur for personal favours and this may result in a councillor acting in a fraudulent or corrupt manner. When there are changes in the pattern of gifts, financial interests received by Councillors, they must disclose such changes to the Municipal Council even if they may regard them as petty. This will enable the Council to determine whether the gifts can be regarded as some form of a bribe or a friendly gesture. **Refer to Annexure B.**

## **7. THE ROLE OF EMPLOYEES**

The basic values and principles governing public administration, in terms of the Constitution provides that:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development-orientated.
- Services must be provided impartially, fairly, equitable and without bias.
- People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- Public administration must be accountable.

- Transparency must be fostered by providing the public with timely, accessible and accurate information.
- Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

Section 2 of Schedule 2 of the Code of Conduct for Municipal Staff Members of the Municipal Systems Act 32 of 2000 states that a staff member must at all times –

- loyally execute the lawful policies of the municipal council;
- perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- act in such a way that the spirit, purport and objects of the basic values and principle governing the local public administration are promoted;
- act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- act impartially and treat all people, including other staff members, equally without favour or prejudice.

Each time an employee is appointed, they should be informed of these policies. They must familiarise themselves to the Principles contained in such legislation and Codes of Conduct, in support of the principles of responsible and transparent service delivery. **Refer to Annexure C.**

## **8. REPORTING SUSPECTED FRAUD AND CORRUPTION**

The municipality must educate staff members on the correct channel to be followed when reporting acts of fraud, corruption and theft. The municipality must encourage staff members to report acts of fraud and corruption internally within the municipality rather than externally. This can only be effective once a whistle blowing hotline has been installed. A reporting channel (Hotline) through which employees, suppliers, contractors and other third parties can report irregular activities, free from victimisation or repercussions, must be developed by the Municipality.

It is the policy of the Moses Kotane Municipality to ensure that a vibrant and effective whistle-blowing policy is promoted and encouraged in the municipality and to this end the municipality undertakes on an ongoing basis to put in place whistle-blowing mechanisms that will not only enhance a culture of openness and reporting fraud and corruption, but one that will also put in place mechanisms and systems protecting the

whistleblower and penalising any person or persons responsible for victimising, harassing or intimidating any actual or potential whistleblower.

Staff members must be made aware of their responsibility to report acts of fraud and corruption to the identified reporting channel of the municipality. The staff members who make such disclosures should be protected from victimisation by the Municipal Manager. Any suspected or actual fraud or corruption must be reported immediately to the municipality's hotline. All calls must be treated with utmost confidentiality and such report may be made anonymously.

Staff members who feel that they cannot report the matters to the identified reporting channels, may take advantage of the provision of the Protected Disclosures Act and report the matter to the South African Police Services, National Prosecuting Authority, Auditor General, Public Protector and other government bodies.

Reports of fraud and corruption should be dealt with confidentially. The service provider / internal operator of the reporting channel must assess the magnitude of the alleged fraud or corruption and where necessary conduct an initial investigation to establish the veracity of the allegations. This preliminary investigation will also determine in some instances whether a further investigation needs to be conducted.

Whistle Blowers should not suffer any penalty or retribution for acting in good faith in reporting suspects or actual incidents of fraud in terms of the Protection Disclosure Act. False or malicious allegation should be discouraged and such cases must be subjected to a disciplinary action or other appropriate actions.

## **9. INVESTIGATIONS**

The aim of a fraud or corruption investigation is to perform procedures in order to determine whether fraud and corruption as suggested by the fraud indicators or reported by whistleblower does exist or not.

Whether the matter is investigated internally or externally the investigator must be objective, thorough and act in a way that is without prejudice to the defendant. The process must be fair to the parties involved.

Any indication of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature will be investigated and followed up by the application of all remedies available within the full extent of the law.

An investigation may result in the search of the accused person or residence, subject however thereto that such searches are conducted in strict accordance with any



legislation applicable thereto (e.g. the Criminal Procedure Act), with due regard to fundamental human rights as enshrined in the Constitution, for reasons that will suit the public interest and in terms of a court order. The investigation may also result in the seizure of the accused person's municipal personal computer or laptop, memory device and cellular devices.

An investigation may require the search of an official's office furniture, computer, files and lockers in the workplace. A search of this kind may only be permitted-

- When there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature;
- When the search is necessary for a non-investigatory work related purpose (for example, when an employee is suddenly unavailable and information is required off the employees computer);
- Where the measures adopted are reasonable in relation to the objectives of the search and are not excessive intrusive in right of the nature of the misconduct. Searches should be related to the alleged misconduct;
- Due care should taken not to breach the Constitutional right to privacy and dignity.

The action that is taken by the municipality must comply with provisions of their Codes of Conduct and legislation which deals with established acts of fraud and corruption. The investigator who establishes that the fraud or corrupt act has occurred must recommend the appropriate action that must be taken.

Where the accused if is found guilty after the completion of the investigation the following should be considered:

- Taking disciplinary action within a reasonable period of time after the incident;
- Instituting civil action to recover losses;
- Initiating criminal prosecution by reporting the matter to SAPS or other relevant law enforcement agencies; and
- Any other appropriate and legal remedies available.

The results of investigations will be disclosed on a need to know basis in order to avoid damaging the reputations of innocent persons initially suspected of wrongful conduct and to avoid civil liability claims against the Municipality. This means that results of fraud and corruption investigations can only be disclosed or discussed with authorised representatives of the South African Police Services and those persons associated with the municipality who have a legitimate need to know results in order to perform their duties and responsibilities.

In the cases, where losses were found during the investigation, all losses suffered by the Municipality whether through negligence, bad management or dishonest acts must be recovered in accordance with the provisions of the MFMA. It is the responsibility of Management to report on all losses to the South African Police Services. Furthermore Management must report all losses to the finance department for insurance claim purposes.

## **10. DISCIPLINARY ACTION**

If it has been established that the municipal employee or councillor has committed a transgression, then,

Disciplinary sanction, in terms of the South African Local Government Bargaining Council Disciplinary Code, must always follow misconduct so as to reinforce the approach that the municipality takes a firm stance against employee misconduct. The disciplinary process must be fair, just and equitable, allowing the accused to state his/her case. Any bargaining agreements in effect between the employer and the Unions must be adhered to throughout the disciplinary process. The process must be adhered to at all times. The prosecutor and the chairman of the hearing should be suitably qualified, knowledgeable and experienced to prosecute and preside. The punishment must fit the crime and must take into account the offence, the offender and the effect of the offence upon the Municipality. The initiation of disciplinary proceedings, the process and the sanctions should be consistent in their application.

## **11. CONFIDENTIALITY**

All information relating to the suspected act of fraud or corruption will be treated confidentially. Any investigation of suspected acts of fraud or corruption must not be disclosed to outsiders, except to the appropriate law enforcement authorities and anyone who has a legitimate right to the information. This is in order to protect both the whistleblower and the suspected person. No council member should be authorised to supply any information with regard to reports of fraud, covered within this policy, to the media without the express permission of the Municipal Manager. The prohibition on the disclosure of confidential and privileged information is governed by the Code of Conduct as contained in the Local Government: Municipal Systems Act 32 of 2000 Schedule 1 and 2, as follows:

No official or councillor of the municipality may –

- a) directly or indirectly disclose confidential or privileged information known to him or her through employment by the Council, other than in discharging his or her official duties or pursuant to a lawful instruction or for the protection of his or her rights;
- b) directly or indirectly use confidential or privileged information known to him or her through employment by the Council, for any purpose other than in discharging his or her official duties or for the protection of his or her rights;
- c) directly or indirectly disclose to any company, partnership, association or similar organisation with which he or she, or his or her spouse, parent or child, is associated, such confidential or privileged information that is not openly available to any other company, partnership, association or similar organisation;
- d) directly or indirectly disclose such confidential or privileged information to any person or organisation unless that person or organisation has a legal right to receive it;
- e) use information gained in his or her official capacity and which is not available to the public generally, for his or her direct or indirect personal advantage.

## **12. CONTROL MEASURES**

The municipality must implement controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescriptions and systems of internal control. Departmental Heads must ensure that all preventative systems and procedures are in place to prevent or expose any fraud and corruption. The Municipal Manager must as soon as possible develop and implement an Anti-Corruption Strategy for the purpose of preventing and detecting incidents of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature. These measures must be checked on a regular basis and a culture of management involvement in ensuring that they always are adequate control measures in the municipality. The municipality must also develop and implement a Fraud Prevention Plan which also extends to the prevention and detection of fraud and corruption, mismanagement and any other irregularities caused intentionally, recklessly or negligently.

## **13. CONFLICTS OF INTERESTS AS IT RELATES TO ALL EMPLOYEES**

This may arise where a manager is not acting in good faith and not in the best interest of the municipality for personal or private gain, such as for instance:

- A manager has a personal interest and interferes with the supply chain management system of the municipality, or
- Amends or tampers with any tender, quotation, contract or a bid after their submission with the intention of influencing the results.
- A manager fails to disclose that he/she has received gifts and or benefits from a particular supplier who is a party to a contract for the provision of goods or services to the municipality or
  
- Fails to disclose that he/she has personal or financial interests in a business that is a party to a contract for provisions of goods or services or
- Disclosure of privileged and confidential information to the external suppliers which may potentially influence the decision to award the contract.
- A manager tries to mislead or attempts to mislead the council or any other structure in its consideration of any matter.

### 13.1. Failure to Disclose

It is of paramount importance for the municipality to state clearly the action that will be taken against any manager who deviates from his responsibilities and fiduciary duties. It must indicate that such deviation amounts to misconduct and sanctions can be instituted.

The Municipality must indicate to the Municipal Managers that it reserves the right to check on its employees and those who do not disclose their interests whether it may be

- Directorships or Partnerships in any business entity
- Share and securities in any company
- Membership of any close corporation
- Other financial interest in any business undertaking whether he/she is a silent partner or a non-executive director
- Interest in any trust or property
- Gifts, sponsorships and grants from other organisations, even how insignificant or trifling they may appear.

The municipality may judge any offence of non-disclosure as an act of misconduct on the part of any municipal official. The municipality must clearly state that the reasons behind disclosure are to cover grey areas where the municipal official may be uncertain whether the gift constitutes a bribe or a friendly gesture.

## **14. CONFLICTS OF INTERESTS AS IT RELATES TO COUNCILLORS**

This may arise where a councillor is not acting in good faith and not in the best interest of the municipality for personal or private gain. The importance of councillor avoiding a conflict of interest in their dealings with the municipality is that it will compromise the oversight role that they play in the municipality. Conflict of interests may arise under the following circumstances:

1. Non-disclosure of any direct or indirect personal business interest that the councillor, or spouse, partner or business associate of that councillor may have without consent being given by the municipal council.
2. Non-disclosure of any direct benefit the councillor's spouse, partner business associate or close family member has acquired or stands to acquire from a contract concluded with the municipality.
3. Obtaining financial interests in the business of the municipality, without prior consent.
4. Appearing on behalf of any other person before the council or a committee for a fee or other consideration, without prior consent.
5. A councillor being party to a contract for the acquisition of goods or services for the municipality, or for performance of work other than as a councillor for the municipality, without prior consent.
6. A councillor may not interfere in the management or administration of a department of the municipal council without prior consent by council.

These conflicts of interest include personal or other business relationships between the trading partners, councillors of the municipality or other third parties may have a negative impact on the arms length principle of conducting business and/or impartiality in the awarding of a contracts or making payments in terms of the contract.

### **14.1. Failure to Disclose**

It is of paramount importance for the municipality to state clearly that a failure to disclose will create conditions that are prone to corruption especially when that

councillor has too much influence in the community which he/she serves. It must indicate that such failure to disclose amounts to misconduct and sanctions will be taken against the councillor.

The municipal council should communicate to its councillors that it will not provide any room for irregularities and any form of corrupt activities; it will apply a zero tolerance policy in rejecting fraud.

The Municipality must indicate to its council members that it reserves the right to check upon their activities when allegations have been brought forward against them.

## **15. COMMITMENT TO FIGHT FRAUD AND CORRUPTION AND DECLARATION OF INTENT**

The council of the municipality calls on all councillors, staff members and the community to unite in the fight against fraud and corruption in the municipality and declare its commitment to-

- Promote leadership in all sectors of society that is committed to the creation of a culture of integrity and to restore confidence in the fight against fraud and corruption.
- Foster a greater culture of transparency and accountability in the municipality.
- To encourage whistle blowing and reporting and strengthen measures to protect all persons from victimisation where they expose fraudulent, corrupt and unethical practices.
- Actively support and engage in ethics training and fraud and corruption awareness programmes in the municipality.
- Uphold the values and principles of the various codes of conduct and to enforce it diligently.
- Promote, support and strengthen co-operation and co-ordination with the different agencies responsible for combating fraud and corruption.

- Support the establishment of a database for blacklisting, and the development of a mechanism for information sharing across all sectors, public and private.
- Strengthen capacity for the implementation of anti-corruption measures in the municipality.
- Assist law enforcement agencies to identify and recover assets obtained through illicit or fraudulent and corrupt means.
- Strengthen all oversight structures in the municipality.
- Encourage business and civil society to expose fraud and corrupt and unethical practices in the municipality.

## **FRAUD AND CORRUPTION IN THE MUNICIPAL ENVIRONMENT**

### **1. Fraud**

Fraud is the unlawful and intentional making of a misrepresentation resulting in actual or potential prejudice to another. This involves actions or behaviour by a public servant or other person or entity that fools others into providing a benefit that would not normally accrue to the public servant, or other persons or entity.

### **2. Forgery**

Forgery is the unlawful and intentional making of a false document with intent to defraud and to the actual or potential prejudice another.

### **3. Uttering**

Uttering is the unlawful and intentional offering, passing off or communication of a forged document with the intent to defraud the actual or potential prejudice of another.

### **4. Corruption**

Corruption is any conduct or behaviour where a person accepts, agrees or offers any gratification for himself/herself or for another person where the purpose is to act dishonestly or illegally. Such behaviour also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty.

- The corruptor commits corruption when he corruptly gives, offers or agrees to give any benefit of whatever nature which is not legally due to another person to influence him/her to do his duty or to influence him not to do his/her duty.
- The corruptee commits corruption when he/she receives, or agrees to receive or attempts to obtain any benefit which is not legally due either for himself/herself or for someone else to do his/her duty or to neglect his/her duty.

### **5. Bribery**

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a public servant. This benefit may accrue to the public servant or other person or entity.



## **6. Embezzlement**

This is a form of theft of resources by persons entrusted with the authority and control of such resources. It is something referred to as theft by conversion in that someone else's property is converted into your own private use.

## **7. Extortion**

Extortion is committed when a person unlawfully and intentionally obtains some advantage which is not due to him from another by subjecting the latter to pressure which induces him to hand over the advantage.

## **8. Conspiracy**

Any person who unlawfully and intentionally conspires with any other person to aid or procure the commission of or to commit any offence, whether at common law or against statute or a statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which the person convicted of actually committing offence would be liable.

## **9. Abuse of power**

This involves a municipal official using his or her vested authority to improperly benefit or to improperly discriminate against another municipal official, person or entity.

## **10. Abuse of privileged information**

This involves the use of privileged information and knowledge that a municipal official possesses as a result of his or her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit him or herself.

## **11. Conflict of interest**

This involves a municipal official failing to disclose in writing full particulars of the benefit to the municipality, that he/she has an interest or his/her spouse, partner or close family member stands to acquire any direct benefit from a contract concluded with the municipality.

## **12. Favouritism**

The practice of giving special treatment to a person or a group of people. This involves the provision of services or resources according to personal affiliation (for example ethnic or religious)

### **13. Nepotism**

This involves a public servant ensuring that family members are appointed to public service positions or that family members receive contracts from the municipality.

### **14. Cronyism**

The practice of appointing friends to high-level, especially political posts regardless of their suitability.

### **15. Collusion**

Conspiring with others especially in planning fraud or conniving and entering into secret agreement for wrongful and improper purposes.

### **16. Theft**

The unlawful and intentional misappropriation of another's property or property which is in his/her lawful possession with the intention to deprive the owner of its right permanently.

## **SCHEDULE 1: CODE OF CONDUCT FOR COUNCILLORS**

### **Preamble**

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established.

### **1. Definitions**

In this Schedule “partner” means a person who permanently lives with another person in a manner as if married.

### **2. General conduct of councillors**

A councillor must—

- (a) perform the functions of office in good faith, honestly and in a transparent manner; and
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

### **3. Attendance at meetings**

A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting

#### **4. Sanctions for non-attendance of meetings**

- (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:
  - (a) not attending a meeting which that councillor is required to attend in terms of item 3; or
  - (b) failing to remain in attendance at such a meeting.
- (2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor.
- (3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

#### **5. Disclosure of interests**

- (1) A councillor must—
  - (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
  - (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.
- (3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

## **6. Personal gain**

- (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the municipal council, a councillor may not—
  - (a) be a party to or beneficiary under a contract for—
    - (i) the provision of goods or services to the municipality; or
    - (ii) the performance of any work otherwise than as a councillor for the municipality;
  - (b) obtain a financial interest in any business of the municipality; or
  - (c) for a fee or other consideration appear on behalf of any other person before the council or a committee.
- (3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2), such consent may only be given to the councillor with the approval of the MEC for local government in the province.

## **7. Declaration of interests**

- (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:
  - (a) shares and securities in any company;
  - (b) membership of any close corporation;
  - (c) interest in any trust;
  - (d) directorships;
  - (e) partnerships;
  - (f) other financial interests in any business undertaking;
  - (g) employment and remuneration;
  - (h) interest in property;
  - (i) pension; and
  - (j) subsidies, grants and sponsorships by any organisation.

- (2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.
- (3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with sub item (1).
- (4) The municipal council must determine which of the financial interests referred in sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

## **8. Full-time councillors**

A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.

## **9. Rewards, gifts and favours**

A councillor may not request, solicit or accept any reward, gift or favour for—

- (a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
- (b) persuading the council or any committee in regard to the exercise of any power, function or duty
- (c) making a representation to the council or any committee of the council; or
- (d) disclosing privileged or confidential information.

## **10. Unauthorised disclosure of information**

- (1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.
- (2) For the purpose of this item “privileged or confidential information” includes any information—
  - (a) determined by the municipal council or committee to be privileged or confidential;
  - (b) discussed in closed session by the council or committee;
  - (c) disclosure of which would violate a person’s right to privacy; or

- (d) declared to be privileged, confidential or secret in terms of law.
- (3) This item does not derogate from the right of any person to access to information in terms of national legislation.

#### **11. Intervention in administration**

A councillor may not, except as provided by law—

- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
- (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- (d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

#### **12. Council property**

A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

#### **12A. Councillor in arrears**

A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.

#### **13. Duty of chairpersons of municipal councils**

- (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—
  - (a) authorise an investigation of the facts and circumstances of the alleged breach;
  - (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
  - (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.
- (2) A report in terms of sub item (1) (c) is open to the public.

- (3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.
- (4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

#### **14. Breaches of Code**

- (1) A municipal council may—
  - (a) investigate and make a finding on any alleged breach of a provision of this Code;  
or
  - (b) establish a special committee—
    - (i) to investigate and make a finding on any alleged breach of this Code; and
    - (ii) to make appropriate recommendations to the council.
- (2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—
  - (a) issue a formal warning to the councillor;
  - (b) reprimand the councillor;
  - (c) request the MEC for local government in the province to suspend the councillor for a period;
  - (d) fine the councillor; and
  - (e) request the MEC to remove the councillor from office.
- (3)
  - (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.
  - (b) A copy of the appeal must be provided to the council.
  - (c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.
  - (d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.



- (4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the councillor should be suspended or removed from office.
- (5) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of sub item (4).
- (6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—
  - (a) suspend the councillor for a period and on conditions determined by the MEC; or
  - (b) remove the councillor from office.
- (7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

## **SCHEDULE 2: CODE OF CONDUCT FOR MUNICIPAL STAFF MEMEBERS**

1. **Definitions.** - In this Schedule “partner” means a person who permanently lives with another person in a manner as if married.

### **2. General conduct**

A staff member of a municipality must at all times—

- (a) loyally execute the lawful policies of the municipal council;
- (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- (c) act in such a way that the spirit, purport and objects of section 50 are promoted;
- (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.

### **3. Commitment to serving the public interest**

A staff member of a municipality is a public servant in a developmental local system, and must accordingly—

- (a) implement the provisions of section 50 (2);
- (b) foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- (c) promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- (d) obtain copies of or information about the municipality’s integrated development plan, and as far as possible within the ambit of the staff member’s job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- (e) participate in the overall performance management system for the municipality, as well as the staff member’s individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

#### **4. Personal gain**

- (1) A staff member of a municipality may not—
  - (a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
  - (b) take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.
- (2) Except with the prior consent of the council of a municipality a staff member of the municipality may not—
  - (a) be a party to a contract for—
    - (i) the provision of goods or services to the municipality; or
    - (ii) the performance of any work for the municipality otherwise than as a staff member;
  - (b) obtain a financial interest in any business of the municipality; or
  - (c) be engaged in any business, trade or profession other than the work of the municipality.

#### **5. Disclosure of benefits**

- (1) A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.
- (2) This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

#### **6. Unauthorised disclosure of information**

- (1) A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorised person.
- (2) For the purpose of this item "privileged or confidential information" includes any information—

- (a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;
  - (b) discussed in closed session by the council or a committee of the council;
  - (c) disclosure of which would violate a person's right to privacy; or
  - (d) declared to be privileged, confidential or secret in terms of any law.
- (3) This item does not derogate from a person's right of access to information in terms of national legislation.

## **7. Undue influence**

A staff member of a municipality may not—

- (a) unduly influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councilor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;
- (b) mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or
- (c) be involved in a business venture with a councilor without the prior written consent of the council of the municipality.

## **8. Rewards, gifts and favours**

- (1) A staff member of a municipality may not request, solicit or accept any reward, gift or favour for —
- (a) persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
  - (b) making a representation to the council, or any structure or functionary of the council;
  - (c) disclosing any privileged or confidential information; or
  - (d) doing or not doing anything within that staff member's powers or duties.
- (2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of sub item (1).

## **9. Council property**

A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

## **10. Payment of arrears**

A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

## **11. Participation in elections**

A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

## **12. Sexual harassment**

A staff member of a municipality may not embark on any action amounting to sexual harassment.

## **13. Reporting duty of staff members**

Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.

## **14. Breaches of Code**

Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67 (1) (h) of this Act.

### **14A. Disciplinary steps**

- (1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.
- (2) Such other disciplinary steps may include—
  - (a) suspension without pay for no longer than three months;
  - (b) demotion;
  - (c) transfer to another post;

- (d) reduction in salary, allowances or other benefits; or
- (e) an appropriate fine.

## THE LEGAL FRAMEWORK

### 1. Local Government: Municipal Finance Management Act, No 56 of 2003 (the MFMA)

To secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith.

#### INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF ACT

**Irregular Expenditure:** - In relation to a municipality or entity

**Fruitless and Wasteful Expenditure:** - Means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

**Unauthorized Expenditure:** - in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3).

#### FIDUCIARY DUTIES OF ACCOUNTING OFFICER

##### 1. The accounting officer of a municipality must-

- a) Act with fidelity, honesty, integrity and in the best interests of the municipality in managing the financial affairs of the municipality.
- b) Disclose to the municipal council and the mayor municipality all material facts which are available to the accounting officer or reasonably discoverable, which in any way may influence the decisions or actions of the council or the mayor and
- c) Seek, within the sphere of influence of that accounting officer, to prevent any prejudice to the financial interests of the municipality

##### 2. The accounting officer may not-

- a) Act in a way that is not consistent with the responsibilities assigned to the accounting officers of the municipalities in terms of this Act or,
- b) Use position or privileges of, or confidential information obtained as accounting officer, for personal gain or to improperly benefit another person.

(S95) General financial Management Functions of Accounting Officers-

The accounting officer of a municipal entity is responsible for managing the financial administration of the entity, and must for this purpose take all reasonable steps.

(S96) The accounting officer of a municipal entity is responsible of-

- a) Assets of the entity, including the safeguarding and maintenance of those assets and
- b) Liabilities of the entity.

2. The accounting officer must, for the purpose of subsection (1) take all reasonable steps to ensure that the entity has and maintains-

- a) A management, accounting and information system that accounts for proper assets and liabilities of the management systems of the municipal entity and
- b) A system of internal control of assets and liabilities, including an asset and liabilities register as may be prescribed.

Reporting of improper interference by councillors-

(S103) the accounting officer of a municipal entity must prompt report to the speaker of the council of the entity's parent municipality and interference by a councillor outside that councillor's assigned duties in

- (a) financial affairs of the municipal entity or
- (b) the responsibilities of the board of directors of the municipal entity.

(S111) Supply Chain Management Policy

Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this part.

(S112) Supply Chain Management Policy to comply with prescribed framework –

The supply chain management policy of a municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for the municipal supply chain management.

(S117) councillors barred from serving on municipal tender committees-

No councillors of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.



## **Financial misconduct by municipal officials**

(S171)(1) The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently-

(a) Contravenes a provision of this Act;

(b) Fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;

(c) Makes or permits, or instructs another official of the municipality to make, an unauthorized, irregular or fruitless and wasteful expenditure; or

(d) Provides incorrect or misleading information in any document which in terms accounting officer of a requirement of this Act must be-

(i) Submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state; or

(ii) Made public.

(2) The chief financial officer of a municipality commits an act of financial misconduct if that officer deliberately or negligently-

(a) Fails to carry out a duty delegated to that officer in terms of section 79 or 50 81 (1) (e);

(b) Contravenes or fails to comply with a condition of any delegation of a power

(c) Makes or permits, or instructs another official of the municipality to make unauthorized, irregular or fruitless and wasteful expenditure; or

(d) Provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (l) (d).

(3) A senior manager or other official of a municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently-

(a) Fails to carry out the delegated duty;

(b) Contravenes or fails to comply with a condition of the delegated power or

(c) Makes an unauthorized, irregular or fruitless and wasteful expenditure: or

(d) Provides incorrect or misleading information to the accounting officer for the duty; purposes of a document referred to in subsection (l)(d).

(4) A municipality must-

(a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded: and

(b) If the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act. 25

### **Offences**

(S173)(1) The accounting officer of a municipality is guilty of an offence if that

Accounting officer-

(a) deliberately or in a grossly negligent way-

- (i) Contravenes or fails to comply with a provision of section 61 (2) b), 61(1), 62(1), 63(2)(a) or 65(2)(a), 64 (2) (a) or (b), (c), (d), (f) or (i)
- (ii) Fails to take reasonable steps to implement the municipality's supply chain management policy referred to in section 11 1;
- (iii) Fails to take all reasonable steps to prevent unauthorized, irregular or fruitless and wasteful expenditure; or
- (iv) Fails to take all reasonable steps to prevent corruptive practices –
  - (aa) in the management of the municipality's assets or receipt of money:
  - (bb) in the implementation of the municipality's supply chain management policy-

(b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the municipality or on money received or spent by the municipality; or

(c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be -

(aa) submitted to the Auditor-General, the National Treasury or any other organ of state;  
or

(bb) made public. Act must be –

(2) The accounting officer of a municipal entity is guilty of an offence if that

(a) deliberately or in a grossly negligent way- accounting officer-

- (i) contravenes or fails to comply with a provision of sections 94(2)(b),95(1),96(2),97(a),99(a),(c),(e)
  - (ii) fails to take all reasonable steps to prevent irregular or fruitless and wasteful expenditure; or
  - (iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity's assets, receipt of money or supply chain management system;
  - (b) deliberately misleads or withholds information from the Auditor-General or the entity's parent municipality on any bank accounts of the municipal entity or on money received or spent by the entity; or
  - (c) Deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be-
    - (aa) submitted to the entity's parent municipality, the Auditor-General, the National Treasury or any other organ of state; or
    - (bb) made public.
- (3) A senior manager or other official of a municipality or municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 or 106, is guilty of an offence if that senior manager or official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation.
- (4) A councillor of a municipality is guilty of an offence if that councillor-
- (a) Deliberately influences or attempts to influence the accounting officer. The chief financial officer, a senior manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act;
  - (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of this Act;
  - (c) Interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or

## **2. Local Government: Municipal Systems Act, No 32 of 2000 (the MSA)**

To provide for the core principles, mechanisms and processes that is necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all; to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for the manner in which municipal powers and functions are exercised and performed; to provide for community participation; to establish a simple and enabling framework for the core

processes of planning, performance management, resource mobilization and organizational change which underpin the notion of developmental local government; to provide a framework for local public administration and human resource development; to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements; to provide for credit control and debt collection; to establish a framework for support, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment; to provide for legal matters pertaining to local government; and to provide for matters incidental thereto.

### **3. Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PACCA)**

To provide for the strengthening of measures to prevent and combat corruption

and corrupt activities; to provide for the offence of corruption and offences relating to corrupt activities; to provide for investigative measures in respect of corruption and related corrupt activities; to provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; to place a duty on persons convicted of corrupt activities relating to tenders and contracts; to place a duty on certain persons holding a position of authority to report certain corrupt transactions; to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and to provide for matters connected therewith.

#### **INTERPRETATION, OBJECT, APPLICATION AND AMENDMENT OF ACT**

(ix) “**gratification**”, includes-

- (a) money, whether in cash or otherwise;
- (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;
- (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (f) any forbearance to demand any money or money’s worth or valuable thing;
- (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a

disciplinary, civil or criminal nature whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty:

(h) any right or privilege;

(i) any real or pretended aid, vote, consent, influence or abstention from voting: or

(j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;

(x) **“induce”** includes to persuade, encourage, coerce, intimidate or threaten or cause a person, and **“inducement”** has a corresponding meaning;

(xi) **“judicial officer”** means-

(a) Any constitutional court judge or any other judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001

(b) a judge of the Labour Court appointed under section 153(1) (a) or (b). (4)

or (5) of the Labour Relations Act, 1995 (Act No. 66 of 1995):

(c) The President or judge of the Land Claims Court appointed under section 22(3), (4) or (8) of the Restitution of Land Rights Act, 1994 (Act No. 32 of 1994);

(d) Any judge of the Competition Appeal Court appointed under section

36(2) of the Competition Act, 1998 (Act No. 89 of 1998);

(e) A judge or additional member appointed under section 7 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 73 of 1996), to a Special Tribunal established in terms of section 2 of that Act;

(f) The presiding officer or member of the court of marine enquiry. The maritime court and the court of survey referred to in sections 267(1). of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), respectively;

(g) Any presiding officer appointed under section 10(3)(b) of the Administration Amendment Act, 1929 (Act No. 9 of 1929). to a divorce court established in terms of section 10(1) of that Act;

(h) any regional magistrate or magistrate defined in section 1 of the Magistrates Act, 1993 (Act No. 90 of 1993);

(i) any commissioner appointed under section 9 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984);

### **General offence of corruption**

3. Any person who directly or indirectly-

(a) accepts or agrees or offers to accept an! gratification from any other person, whether for the benefit of himself or herself or for the benefit of another Person: or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act personally or by influencing another person so to act in a manner that amounts to the-

(aa) illegal, dishonest, unauthorized, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation

### **Offences of receiving or offering of unauthorized gratification by or to party to an employment relationship**

**10.** Any person-

(a) who is party to an employment relationship and who direct or indirectly, accepts or agrees or offers to accept from any other person an unauthorized gratification, whether for the benefit of that person or for the benefit of another person; or

(b) who, directly or indirectly, gives or agrees or offers to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person.

### **Offences in respect of corrupt activities relating to contracts**

**12.** Any person who, directly or indirectly-

(a) Accepts or agrees or offers to accept any gratification from any other person. Whether for the benefit of himself or herself or for the benefit of that other person or of another person; or

(b) Gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person.

### **Offences in respect of corrupt activities relating to procuring and withdrawal of**

#### **Tenders**

**13.** Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-

## **PENALTIES AND RELATED MATTERS**

### **Penalties**

**26.** (1) Any person who is convicted of an offence referred to in-

(a) Part 1, 2, 3 or 4, or section 18 of Chapter 2, is liable-

(i) in the case of a sentence to be imposed by a High Court to a fine or to

(ii) in the case of a sentence to be imposed by a regional court to a fine or to imprisonment for a period not exceeding 18 years; or

(iii) in the case of a sentence to be imposed by a magistrate's court to a fine 1 imprisonment up to a period for imprisonment for life; or to imprisonment for a period not exceeding five years;

(b) section 17(1), 19, 20, 23(7)(a) or (b) or 34(2), is liable-

(i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 10 years: or

(ii) in the case of a sentence to be imposed by a magistrate's court to a fine 15 or to imprisonment for a period not exceeding three years: or

(c) section 28(6)(b), is liable to a fine of R250 000 or to imprisonment for a period not exceeding three years.

(2) A person convicted of an offence referred to in section 21. is liable to the punishment laid down in subsection (1) for the offence which that person attempted or conspired to commit or aided, abetted, induced, instigated instructed, commanded, counselled or procured another person to commit.

(3) In addition to any fine a court may impose in terms of subsection (1) or (13), the court may impose a fine equal to five times the value of the gratification involved in the offence.

#### **4. Protected Disclosures Act No, 26 of 2000 (the PDA)**

To make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

#### **5. Electronic Communications and Transactions Act, No 25 of 2002 (the Electronic communications Act)**

To give effect to the constitutional right of access to any information held by the State and information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.

## **6. Promotion of Access to Information Act No, 2 of 2000.**

Objects of acts - the objects of this Acts are:

- a) To give effect to the constitutional right of access to-
  - i) any information held by the State, and
  - ii) any information that is held by another person and that is required for the exercise or protection of any rights.
- b) To give effect to that right-
  - i) subject to justifiable limitations, including but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance, and
  - ii) in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution.
- c) To give effect to the constitutional obligations of the State of promoting a human rights culture and social justice, by including public bodies in the definition of “requester”, allowing them, amongst others, to access information from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest.
- d) To establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and
- e) Generally, to promote transparency, accountability and effective governance of all public and private bodies by, including but not limited to, empowering and educating everyone—
  - i) To understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies.
  - ii) To understand the functions and operation of public bodies and
  - iii) To effectively scrutinize and participate in, decision-making by public bodies that affects their rights