

LESEDI LOCAL MUNICIPALITY



ANTI-FRAUD AND CORRUPTION STRATEGY AND PREVENTION PLAN

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1. Introduction

The Lesedi Local Municipality's Anti-Corruption Strategy and Fraud Prevention Plan

This Anti-Corruption Strategy and Fraud Prevention Plan have been developed as a result of the expressed commitment of Government to fight corruption. It compliments the National Anti-Corruption Strategy of the country and supplements both the Public Service Anti-Corruption Strategy and the Local Government Anti-Corruption Strategy.

The policy is also established to give effect to the various legislative instruments relating to fraud and corruption.

In addition, the Policy provides guidelines as to how to respond should instances of fraud and corruption be identified.

A brief background to the basis of Anti-Corruption and Fraud Prevention in the Public Sector is set out in Annexure One.

A summary of the most important elements of legislative instruments relating to fraud and corruption is attached as Annexure Two.

2. Approach to fraud and corruption

2.1 Actions constituting fraud and corruption

Fraud and corruption manifests itself in a number of ways and varying degrees of intensity.

These include, but are not limited to:

- unauthorised private use of 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 family members or close friends;
- operating a private business in working hours;
- stealing equipment or supplies from work;
- accepting bribes or favours to process requests;
- accepting bribes or favours 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;
- misappropriating fees received from customers, and avoiding detection by not issuing receipts to those customers;
- misappropriation of Municipal funds;

- falsifying accounting records or documents
- falsifying consumer debtors accounts or amending such accounts without authority;
- theft.

2.2 Statement of attitude to fraud

Fraud represents a significant potential risk to the Municipality's assets and reputation.

The Municipality is committed to protecting its funds and other assets

It is the policy of the Municipality that fraud, corruption, maladministration or any other dishonest activities of a similar nature will not be tolerated. Such activities will be investigated, where required, and actions instituted against those found responsible. Such actions may include the laying of criminal charges, civil and administrative actions and the institution of recoveries where applicable.

This Policy includes prevention, detection, response and investigative strategies.

2.3 Application of Policy

This policy applies to all employees, councillors, stakeholders, contractors, vendors/suppliers and any other party doing business with the Municipality.

2.4 Responsibilities in relation to fraud and corruption.

It is the responsibility of all employees and councillors of the Municipality to report all incidents of fraud or corruption, or any other dishonest activities of a similar nature.

Any fraudulent or corrupt behaviour must be reported immediately through the mechanisms set out in whistle blowing mechanism contained in section 3 of this Policy

All reports received will be acted upon, will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.

All Managers are responsible for the detection, prevention and investigation of fraud and corruption or any dishonest activities of a similar nature, within their areas of responsibility.

3. Whistle Blowing

3.1 Introduction

The Protected Disclosures Act came into effect on 16 February 2001. This Act is commonly referred to as the Whistle blowing Act. In order to remain in compliance with the Act, the Municipality has created a whistle blowing program with the following objectives:

- To encourage the reporting of matters that may cause financial or non-financial loss to the Municipality, or damage to the Municipality's reputation;
- To enable the Municipality to deal effectively with reports from whistleblowers by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure;
- To provide for the appropriate infrastructure including an alternative mechanism for reporting.

3.2 Scope of the Whistle Blowing mechanism

The whistle blowing mechanism is not a replacement for the existing Grievance Procedure and therefore grievances should not be reported in terms of this policy. Any grievances should be lodged in accordance with the provisions of the Grievance Procedure.

In terms of the Protected Disclosures Act, the following concerns may be raised:

- a) That a criminal offence has been committed, is being committed or is likely to be committed;
- b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) That the health or safety of an individual has been, is being or is likely to be endangered;
- e) That the environment has been, is being or is likely to be damaged;
- f) That unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000 has occurred, is occurring or is likely to occur; or
- g) That any matter referred to in paragraphs (a) to (f) had been, is being or is likely to be deliberately concealed.

3.3 Purpose of the Whistle Blowing mechanism

This Whistle Blowing mechanism has been developed to give effect to the objects of the Protected Disclosures Act, namely:

- (a) To protect an employee from being subjected to occupational detriment on account of having made a protected disclosure;
- (b) To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and
- (c) To provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.

This mechanism is intended to encourage employees to report the matters as set out under paragraph 3.2 (a) to (g) by providing procedures for such reporting as well as ensuring that employees who make such reports in good faith are not victimised, harassed and do not suffer any occupational detriment.

3.4 Who can raise a concern

Any member of staff, councillor or member of the public who has a reasonable belief that there is fraud/corruption or misconduct relating to any of the protected matters specified under paragraph 3.2 may raise a concern under the procedure detailed below. Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true. The issues raised may relate to a manager, another member of staff, or a group of staff.

3.5 Confidential reporting procedure

Where a member of staff, a councillor or a member of the public wishes to raise a concern anonymously, such anonymity will be respected.

3.5.1 Reports by a member of staff

Step 1:

If a member of staff has an issue to report, the issue should be raised:-

1. with the staff members Manager; or
2. in the case of fraud, corruption or any other dishonest activities involving the staff members Manager, with the Director of that Manager; or
3. in the case of fraud, corruption or any other dishonest activities involving the Director of the Manager concerned, with the Municipal Manager; or
4. in the case of fraud or corruption or any other dishonest activities involving the Municipal Manager, with the Chairperson of the Anti-Fraud and Corruption Committee referred to in section 5.1.1.2 of this Policy; or
5. in the case of fraud or corruption or any other dishonest activities involving a Councillor, with the Municipal Manager.

3.5.2 Reports by a councillor or a member of the public

Step 1:

If a councillor or a member of the public has an issue to report, the issue should be raised:-

1. with the Municipal Manager; or
2. in the case of fraud or corruption or any other dishonest activities involving the Municipal Manager, with the Chairperson of the Anti-Fraud and Corruption Committee referred to in section 5.1.1.2 of this Policy.

When raising an issue, the person making the report should provide as much information about the concern as possible, including names, dates and places, where possible, as well as the reason why the person concerned is particularly concerned about the issue he/she wishes to report.

The person to whom the report is made will follow the various steps set out in this Policy.

Alternatively

If a member of staff, a councillor or a member of the public has an issue to report, he/she may contact the Municipality's Fraud Hotline (when established) to make such a report. The person concerned may remain anonymous when making such a report.

An operator will answer the call and record the details of the concern.

The Fraud Hotline will thereafter submit a report to the designated officials within the Municipality responsible for receiving and actioning such reports.

Step 2:

If a staff member, a councillor or a member of the public has exhausted the abovementioned internal mechanisms or has substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, the person concerned may raise the matter in good faith with a member of the Cabinet or Executive Council in this Province.

3.6 False or malicious allegations

Those wishing to make reports must guard against making allegations which are false and made with malicious intent. Persons making such reports will not enjoy the protection offered by the Protected Disclosures Act. Furthermore, there are resource and cost implications in respect of initiating investigations, which need to be considered in the event of a false or malicious accusation.

4. Response of the Municipality to allegations of fraud or corruption.

4.1 Handling of allegation of fraudulent or corrupt activities

The action that will be taken by the Municipality when an allegation of fraudulent or corrupt activity is received will depend on the nature of the concern reported. The possible actions open to the Municipality are to:-

- investigate internally; and/or
- refer the matter to the South African Police Services or other relevant law enforcement agency.

The person receiving the allegation will ensure that the Municipal Manager is advised at the earliest opportunity or, if the Municipal Manager is the subject of the allegation, will ensure that the Chairperson of the Anti-Fraud and Corruption Committee is advised at the earliest opportunity.

The Municipal Manager or the Chairperson of the Anti-Fraud and Corruption Committee, as the case may be, will conduct an initial evaluation to decide whether an investigation is appropriate and, if so, what form the investigation should take. Concerns raised may not necessarily require an investigation to resolve them.

Anonymous reports may warrant a preliminary investigation before any decision to implement an independent investigation is taken.

Where an internal investigation is considered appropriate, the Municipal Manager or the Chairperson of the Anti-Fraud and Corruption Committee, as the case may be, will appoint an appropriately qualified and experienced person who is independent of the section/unit where investigations are required. This may be a senior manager within the Municipality 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 will be paramount.

The person appointed to conduct or co-ordinate the investigation of an allegation of fraud may consult the Chairman of the Anti-Fraud and Corruption Committee on technical aspects of the investigation.

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

The amount of contact between the manager or investigating officer investigating the issues and the persons raising the concern (if not anonymous) will depend on the nature of the concern raised and the investigations which may require to be performed. If required, further information may be sought from the person who made the report.

All investigation will be handled confidentially and will not be discussed with persons other than those who legitimately have the right to such information.

4.2 General nature of Procedures for investigations

Investigations of fraud and corruption must be conducted in a manner which avoids:-

- 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, and recognising the limited resources within the Municipality, external consultants (e.g. external auditors or forensic accountants) may be used to provide assistance to the Municipality when a fraud is reported. The external consultant may be assisted by experienced personnel within the Municipality who are sufficiently independent of the area or the matter under investigation.

The Municipal Manager, within his/her delegated authority, will have the discretion to determine the appropriate external consultants and/or the Municipal personnel to conduct investigations: provided that if an allegation of fraud or corruption concerns the Municipal Manager, the authority of the Municipal Manager to determine the appropriate external consultants and/or the Municipal personnel shall vest in the Chairperson of the Anti-Fraud and Corruption Committee.

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 banks and other financial institutions (subject to the granting of appropriate approval/Court orders);
- Enquiries with other third parties;
- Data search and seizure;
- Expert witness and specialist testimony;
- Tracing funds/assets/goods;
- Liaison with the police or other law enforcement or regulatory agencies; and
- Interviewing persons suspected of involvement in fraud and corruption;
- Any other reasonable action legally required or necessary to investigate the matter.

4.3 Documentation of the results of the investigation

The appointed investigator must submit a written report to the Municipal Manager detailing the circumstances and recommending appropriate remedial action following the investigation: provided that in the case of an investigation concerning the Municipal Manager, the report and recommendations must be submitted to the Chairperson of the Anti-Fraud and Corruption Committee.

Any investigation initiated must be concluded by the issue of a report by the person 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.

4.4 Disciplinary proceedings

The ultimate outcome of disciplinary proceedings may involve a person/s receiving written warnings or the termination of their services. All disciplinary proceedings will take place in accordance with the procedures as set out in the disciplinary procedures adhered to by the Municipality.

4.5 Prosecution

Should investigations uncover evidence of fraud or corruption in respect of an allegation or series of allegations, the Municipality will review the facts at hand to determine whether the matter is one that ought to be reported to the relevant law enforcement agency for investigation and possible prosecution. Such reports must be submitted to the South African Police Service in accordance with the requirements of the Municipal Finance Management Act and the Municipal Systems Act. The Municipality will give its full co-operation to any such law enforcement agency including the provision of reports compiled in respect of investigations conducted.

4.6 Recovery action

Where there is clear evidence of fraud or corruption and there has been a financial loss to the Municipality, 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.

4.7 Internal control review after discovery of fraud, theft or corruption

In each instance where fraud, theft or corruption 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 Line Management of the Department concerned.

4.8 Other matters

The Municipal Manager, in conjunction with the Chairman of the Anti-Fraud and Corruption Committee, will provide the details of fraud/corruption or possible fraud/corruption to the Audit Committee.

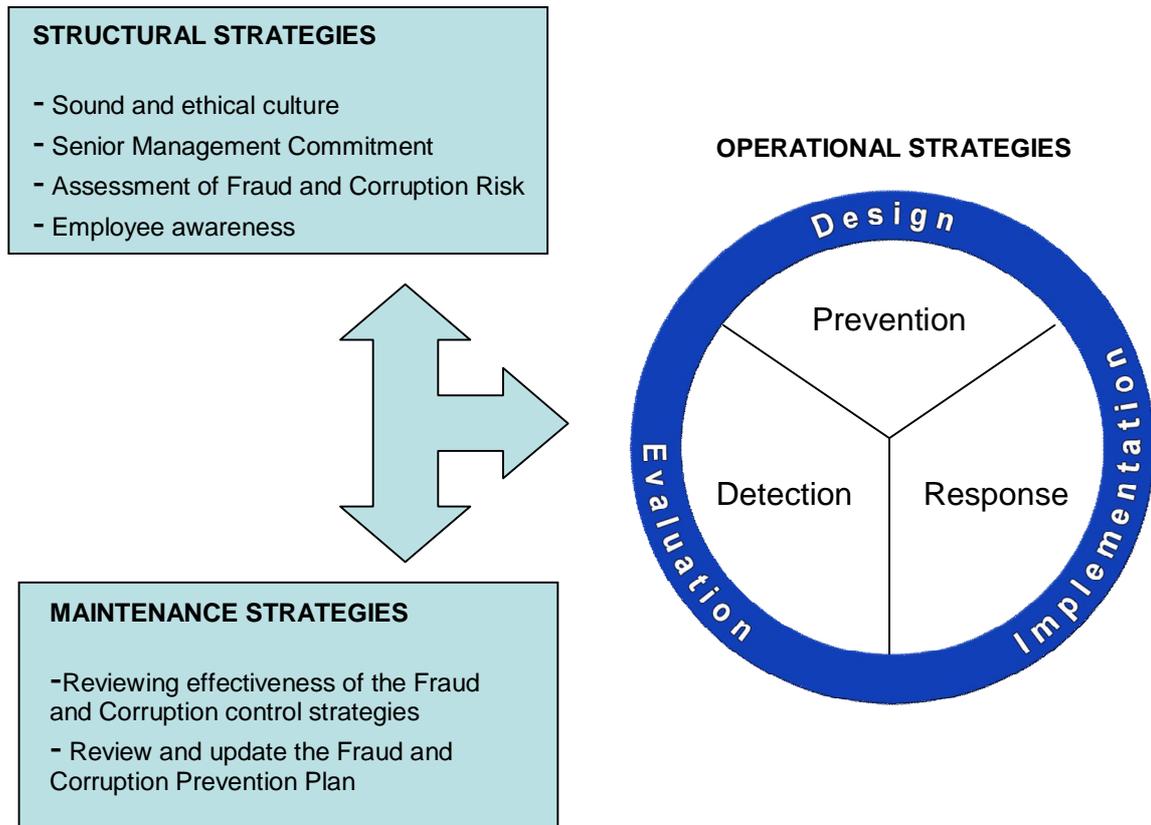
In each instance where fraud is detected, the Anti-Fraud and Corruption Committee will reassess the adequacy of the internal control environment (particularly those controls directly impacting on the fraud incident) and consider the need for improvements. Where improvements are required, they should be implemented as soon as practicable.

5. Fraud and Corruption Control Strategies

The approach of the Municipality in controlling fraud and corruption is focussed into 3 areas, namely:

- Structural Strategies;
- Operational Strategies; and
- Maintenance Strategies.

Fraud and Corruption Control Framework



5.1 Structural Strategies

5.1.1 Responsibilities for fraud and corruption risk management

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

5.1.1.1 *Municipal Manager*

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

5.1.1.2 *Anti-Fraud and Corruption Committee*

An Anti-Fraud and Corruption Committee is established in terms of this Policy.

The role of the Anti-Fraud and Corruption Committee is to oversee the Municipality's approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties.

The committee shall consist of:-

1. A Chairperson appointed by the Municipal Manager;
2. One representative of each Department of the Municipality, appointed by the Director of the Department;
3. the Internal Auditor.

The Anti-Fraud and Corruption Committee will meet at least once a month to discuss the following issues:

- Progress made in respect of implementing the Anti-Fraud and Corruption Strategies and Fraud Prevention Plans;
- Reports received by the Municipality regarding fraud and corruption incidents with the view to making any recommendations to the Municipal Manager;
- Reports on all investigations initiated and concluded; and
- All allegations received via the hotline.

Proceedings of such meetings will be minuted and such minutes circulated to the Municipal Manager and Chairman of the Audit Committee.

5.1.1.3 Senior Management

For the purpose of this Policy, Senior Management means all staff of the Municipality occupying Posts at Level 3 and upward.

Senior Management must be committed to eradicating fraud and corruption and ensuring that the Municipality 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 Municipal Manager, will ensure that it does not become complacent in dealing with fraud and corruption and that it will ensure the Municipality's overall fraud and corruption strategy is reviewed and updated regularly. 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.

5.1.1.4 An ethical culture

The Municipality 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 behaviour 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 of a Municipality reflects the Municipality's ethical conduct. In this regard, the highest standards of ethics are required by councillors and employees when fulfilling their duties.

Furthermore, the Local Government : Municipal Systems Act No. 32 of 2000 prescribes a Code of Conduct for Councillors and a Code of Conduct for Municipal Employees.

These Codes of Conduct form part and parcel of this Policy.

Councillors are bound by the Code of Conduct for Councillors and Municipal Employees are bound by the Code of Conduct for Municipal Employees.

A copy of the Code of Conduct for Councillors and a copy of the Code of Conduct for Municipal Employees is attached as Annexures Three and Four respectively.

5.1.1.5 Rules Committee

1. A Committee of the Council is hereby established in terms of section 14 of the Code of Conduct for Councillors contained in the Local Government: Municipal Systems Act, 2000 to-
 - (i) investigate and make a finding on any alleged breach of the said Code of Conduct;
 - (ii) make appropriate recommendations regarding any such alleged breach of the Code of Conduct to the Council;
2. The Committee referred to in 1 above be designated the MPAC and its members should consist of Councillors not seating on other structures of Councillors for the sake of impartiality when matters presented to it. It must be constituted in a way that it follows proportional representation of political parties in Council.
4. The quorum of MPAC should be 3 members.
3. The standing proceedings to be followed by the Rules Committee in relation to any allegation of a breach of the code of conduct are set out in Annexure Five.

5.2 Operational Strategies

5.2.1 Internal Controls

Internal controls are the first line of defence against fraud and corruption. While internal controls may not fully protect the Municipality against fraud and corruption, they are essential elements in the overall Anti-Fraud and Corruption Strategy.

All areas of operations require internal controls, for example:

- Physical controls (securing of assets);
- Authorisation controls (approval of expenditure);
- Supervisory controls (supervising day-to-day issues);
- Analysis of data;
- Monthly and annual financial statements;
- Reconciliation of bank statements, monthly; and
- Reconciliation of ledger accounts, monthly.

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

5.2.2 Prevention strategies

To create an overall preventative Municipal environment in respect of fraud and corruption combined initiatives will be implemented. These include the following:

5.2.2.1 Employee awareness:

Programmes to raise Employee awareness of the Municipality's Anti-Fraud and Corruption Strategy, Code of Conduct, Whistle blowing policy and the manifestation of fraud and corruption in the workplace will be undertaken periodically.

5.2.2.2 Pre-employment screening

Pre-employment screening will be carried out for all appointments and evidence of such screening will be maintained by the HR Department.

5.2.2.3 Recruitment procedures

Recruitment will be conducted in accordance with the Municipal recruitment procedure.

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 Department and withdraw from any further procedures.

In this section, "conflict of interest" means, amongst other things, any close or remote family ties, social and/or economic ties, or any other association which would be reasonably perceived as biased.

5.2.2.4 Internal audit programme

A robust Internal Audit programme, which focuses on the prevalent high Fraud and Corruption risks, will be implemented as an effective preventative measure. The Internal Audit Department, in conjunction with the Municipal Manager, will compile such a programme on an annual basis, and such a programme will also include "surprise audits".

5.2.2.5 Disclosure of interests, gifts and/or favours

Disclosure of interests

All senior managers and Councillors of the Municipality must disclose their specific personal assets and business interests within 14 days of their appointment to the municipality and, thereafter, on an annual basis, within 14 days of the commencement of the financial year. A form for use in connection with such declarations is attached as Annexure Six.

Completed forms will be kept with the Municipal Manager or his delegate.

Disclosure of gifts and/or favours

All senior managers and Councillors of the Municipality must disclose details of any gift or favour given to them by any service provider or potential service provider above a value determined from time to time by the Anti-Fraud and Corruption Committee.

A form for use in connection with such declarations is attached as Annexure Seven.

Completed forms will be kept with the Municipal Manager or his delegate.

5.2.2.6 Detection strategies

Detection of fraud and corruption will be achieved through:

- vigilance on the part of employees, including line management;
- the Internal Audit function;
- ad hoc Management Reviews;
- anonymous reports; and
- the application of detection techniques.

The Municipal Manager will be responsible for developing detection strategies and will work closely with line management and the Internal Audit function for this purpose.

5.2.2.7 Internal Audit

A robust Internal Audit programme which focuses on the prevalent high Fraud and Corruption risks will also serve as an effective detection measure. As part of the detection strategy, the Internal Audit programme 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 a 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.
- Forensic data analysis: The Municipality's computer system is an important source of information on fraudulent and sometimes corrupt conduct. Software applications will be used during internal audits, surprise audits and post-transaction reviews to assist in detecting any possible fraud and corruption.
- Management accounting reporting review: Using relatively straightforward techniques in analysing the Municipality's management accounting reports, trends can be examined and investigated which may be indicative of fraudulent conduct.

5.3 Maintenance Strategies

5.3.1 Assessment of fraud and corruption risk

The Municipality, under the guidance of the Municipal Manager and the Chairman of the Anti-Fraud and Corruption Committee, will conduct annual fraud and corruption risk assessments to identify potential fraud and corruption risk exposures to the Municipality. 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 "Focus Areas at Risk" and which will provide an indication of how fraud and corruption risks are manifested and a "Fraud and Corruption Risk Register" which will prioritise the fraud and corruption risks and indicate actions to mitigate these risks.

The manner in which the fraud and corruption risk assessment process will take place is set out in Annexure Eight.

5.3.2 Review of the effectiveness of the Anti-Fraud and Corruption Strategy and Prevention Plan

The Municipality will conduct a review of the Anti-Fraud and Corruption Strategy and Prevention annually to determine the effectiveness thereof. The Municipal Manager is ultimately accountable for this review and may appoint a person to take responsibility for this.

The Lesedi Municipal Council adopted Bursary Policy in its meeting held on the 30th of May 2013.

Mr. A Makhanya
Municipal Manager
Lesedi Municipality

Date:

ANTI-CORRUPTION AND FRAUD PREVENTION IN THE PUBLIC SECTOR: BACKGROUND

1. The Public Service Anti-Corruption Strategy

During 1997, Government initiated a national anti-corruption campaign. This campaign progressed to a National Anti-corruption Summit held in April 1999 at which all sectors of society (public and private) committed themselves to establishing sectoral anti-corruption strategies. At the same time, they also committed to the co-responsibility for fighting corruption through the coordination of these sectoral strategies. A range of other resolutions emanated from this Summit and all the sectors committed to implementing these.

The Department of Public Service and Administration (DPSA) was instructed to forge various initiatives across the public service into a coherent strategy with the support of other Departments. A Public Service Task Team (PSTT) consisting of key Departments was convened for this task and representation from local government and public entities were included in order to establish a platform for the roll-out of the strategy to the whole of the Public Sector (Public Service, Local Government and Public Entities).

2. The Local Government Anti-Corruption Strategy

Local Government developed The Local Government Anti-Corruption Strategy (LGACS), which is modelled around the Public Service Anti-Corruption Strategy. The main principles upon which the LGACS is based are the following:

- Creating a culture within municipalities, which is intolerant to unethical conduct, fraud and corruption;
- Strengthening community participation in the fight against corruption in municipalities;
- Strengthening relationships, with key stakeholders, that are necessary to support the actions required to fight corruption in municipalities, for example, South African Local Government Association (SALGA), Employee Representative Unions, and Communities;
- Deterring and preventing of unethical conduct, fraud and corruption;
- Detecting and investigating unethical conduct, fraud and corruption;
- Taking appropriate action in the event of irregularities, for example, disciplinary action, recovery of losses, prosecution, etc; and
- Applying sanctions, which include redress in respect of financial losses.

ANNEXURE TWO

LEGISLATIVE INSTRUMENTS RELATING TO FRAUD AND CORRUPTION.

1. Definition of Fraud and Corruption

In South Africa, the Common Law offence of fraud is defined as “the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. The term “fraud” is also used in a wider sense by the general public. In this regard, the term is used in this document in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty. In other words, fraud can be described as any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

The general offence of corruption is contained in Section 3 of The Prevention and Combating of Corrupt Activities 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 unauthorised performance 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 unauthorised or improper inducement to do or not to do anything

is guilty of the offence of Corruption.

Corruption in its wider meaning, and as referred to in this document, includes any conduct or behaviour where a person accepts, agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly or illegally. Such behaviour also includes the misuse of material or information, abuse of a position of authority or a breach of trust or violation of duty.

2. Forms of corruption

Corruption takes various forms in the public service and elsewhere in society.

The following are examples of different types of corruption.

Bribery

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of public servants.

Embezzlement

This involves theft of resources by persons who control such resources.

Fraud

Any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

Extortion

Coercion of a person or entity to provide a benefit to a public servant, another person or an entity, in exchange for acting (or failing to act) in a particular manner.

Abuse of power

The use by a public servant of his or her vested authority to improperly benefit another public servant, person or entity (or using vested authority to improperly discriminate against another public servant, person or entity).

Conflict of interest

The failure by a public servant to act or to consciously fail to act on a matter where the public servant has an interest or another person or entity that has some form of relationship with the public servant has an interest.

Abuse of privileged information

This involves the use, by a public servant of privileged information and knowledge that a public servant possesses as a result of his/ her office to provide unfair advantage to another person or entity to obtain a benefit.

Favouritism

The provision of services or resources according to personal affiliation (for example cultural or religious) of a public servant.

Nepotism

A public servant ensuring that family members are appointed to public service positions or that family members receive contracts from the state is regarded as nepotism.

These manifestations are by no means exhaustive as corruption appears in many forms and it is virtually impossible to list all of these.

3. Regulatory Framework

3.1 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 establishment 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 unauthorised performance 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 unauthorised 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; and
- 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 interests; or
- In the case of a tender process, the said officer’s conditions of employment do not prohibit him/her from acquiring such interests as long as the interests are acquired through an independent tender process.

3.2 Prevention of Organised Crime Act, 121 of 1998 (POCA)

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

- The combating of organised crime, money laundering and criminal gang activities;
- The criminalisation 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.

3.3 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 over time, 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.

The Act imposes compliance obligations on so-called “accountable institutions” which are defined in Schedule 1 to the Act. 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 a 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 and who knows or suspects certain facts has a duty to report their knowledge or suspicion to the FIC within a prescribed period. Matters that require reporting include knowledge or suspicion of the following:

The receipt of proceeds of unlawful activities;

- 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.

3.4 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 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 FIC.

3.5 Statutes combating fraud and corruption

3.5.1 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 employee 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, provided that he/she has information that:

- A crime has been, is being, or is 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;
- The environment has been, is being or is likely to be endangered;
- Unfair discrimination has been or is 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.

3.5.2 Municipal Finance Management Act 2003 (“MFMA”)

The MFMA was promulgated to facilitate the formal management of municipal finances and associated activities. The controls and administrative systems implemented by any Municipality are very relevant to the content of the Act. Certain aspects of the Act refer specifically to activities which might be regarded as being corrupt or fraudulent in nature. Some relevant aspects are as follows:

Unauthorised, irregular or fruitless and wasteful expenditure

Section 32 of the Act indicates that, without limiting the liability of the common law or other legislation, the following office bearers in a Municipality are mandated with certain responsibilities, as follows:

- (a) A political office bearer of a Municipality is liable for unauthorised expenditure if that office bearer knowingly instructed an official of the Municipality to incur expenditure, which was likely to be considered unauthorised expenditure;
- (b) The accounting officer (ie Municipal Manager) is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, unless the expenditure was incurred following a decision by the mayor or executive committee of the Municipality, resulting in fruitless or wasteful expenditure, provided that the accounting officer has notified the council, the mayor or the executive committee, in writing, that the expenditure is likely to be considered unauthorised, irregular or fruitless and wasteful;
- (c) Any political office bearer or official of a Municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure;
- (d) Any political office bearer or official of a Municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

Furthermore, in the event of such unauthorised, irregular or wasteful expenditure, the Municipality is required to recover the expenditure from the person liable for the expenditure, unless, the council retrospectively authorises/condones the expenditure on the grounds that it represented an authorised adjustment, or that it is deemed irrecoverable and written off by the council. The writing off of the expenditure by the council, however, is no excuse in criminal or disciplinary proceedings against the person. The writing off of the expenditure does not signify a condoning of the expenditure.

In the event of unauthorised expenditure, the accounting officer is obliged to advise promptly the mayor, the MEC for local government in the province and the Auditor General, in writing, providing details as to:

- (a) the fruitless or wasteful expenditure;
- (b) whether any person is responsible or is under investigation with regard to the expenditure; and
- (c) the steps taken to recover or rectify such expenditure.

Where irregular expenditure constitutes a criminal offence, or theft or fraud, the accounting officer must report all such cases to the South African Police.

In the event that the accounting officer is the person responsible for the unauthorised expenditure, then the council must take all reasonable steps to ensure that the police are advised accordingly.

Funds transferred to organisations and bodies outside government

Section 67 of the Act refers to the transfer of funds and stipulates, *inter alia*, that no funds will be transferred from the Municipality unless the accounting officer is satisfied that the organisation or body implements effective, efficient and transparent financial management and internal control systems to guard against fraud theft and financial mismanagement.

Supply chain management policy to comply with prescribed framework

Section 112 stipulates that the supply chain management policy of the a Municipality must be fair, equitable, transparent, competitive and cost effective and comply with prescribed regulatory framework for municipal supply chain management, which must cover, *inter alia*, measures for:

- (a) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
- (b) promoting ethics of officials and other role players involved in municipal supply chain management.

Implementation of system

Aligned with the supply chain management policy is section 115, which stipulates that the accounting officer of a Municipality must take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

Audit Committees

Section 116 of the Act stipulates the procedures aligned to Audit Committees. Each Municipality must have an Audit Committee, which is regarded as an independent advisory body which must:

- (a) advise the municipal council, political office bearers, the accounting officer and management staff on matters relating to, *inter alia*:
 - i. internal financial control and internal audits
 - ii. risk management
 - iii. effective governance
- (b) carry out such investigations into the financial affairs of the Municipality as the council may request.

Financial misconduct by municipal officials

Section 171 sets out the stipulations relating to disciplinary proceedings to be adopted in the event of financial misconduct by municipal officials. The

accounting officer commits financial misconduct if he/she deliberately or negligently:

- (a) contravenes the provisions of the Act;
- (b) fails to comply with a duty imposed by a provision of the Act on the accounting officer of a Municipality;
- (c) permits or instructs another official of the Municipality to make an unauthorised, irregular or fruitless and wasteful expenditure;
- (d) provides incorrect or misleading information in any document which, in terms of the Act, must be submitted to the mayor, council, Auditor General, National Treasury or other organ of state, or made public.

The chief financial officer of a Municipality commits an act of financial misconduct if he/she fails to carry out delegated duties in terms of the Act. In addition financial misconduct is committed if he/she permits or instructs another official to make unauthorised or fruitless and wasteful expenditure, or provides incorrect or misleading information to the accounting officer.

The Act stipulates further, under this paragraph, that a Municipality must:

- (a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, senior manager or other official of the Municipality unless those allegations are frivolous; and
- (b) if the investigation warrants it, institute disciplinary proceedings against the accounting officer, chief financial officer or any other official in accordance with stipulations set out in the Municipal Systems Act.

3.5.3 Municipal Systems Act, No 32 of 2000 (“MSA”)

The MSA sets out procedures to be adopted by municipal management with regard to a number of aspects affecting the management of a Municipality. The Act also stipulates procedures to be adopted with regard to certain aspects related to misconduct and the investigation thereof.

Human resource development

In section 67, the Act stipulates that a Municipality, in accordance with the Employment Equity Act, 1998, must develop and adopt appropriate systems and procedures to ensure, *inter alia*, the investigation of allegations of misconduct and complaints against staff.

Code of conduct

Sections 69 and 70 of the Act deal with the Code of Conduct, details of which appear in Schedule 2 of the Act, to be provided to staff members and communicated to the local community. The municipal manager of a Municipality must:

- (a) provide a copy of the Code of Conduct to every member of the municipal staff;
- (b) provide every member of staff with any amendments to the Code;
- (c) ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read; and

- (d) communicate sections of the Code of Conduct that affect the public, to the local community.

Rewards, gifts and favours

Under section 9 of the Act, it is stipulated that a councillor may not request, solicit or accept any reward, gift or favour for:

- (a) voting in a particular manner
- (b) persuading the council or any committee in regard to the exercise of any power, function or duty;
- (c) making representation to the council; or
- (d) disclosing privileged or confidential information.

Duty of chairpersons of municipal councils with regard to council property

A councillor may not use, take or acquire or benefit from any property or asset owned, controlled or managed by the council. In the event that the chairperson of a council, on reasonable suspicion, is of the opinion that a provision of this stipulation has been breached, then the chairperson is obliged to:

- (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

The chairperson must furthermore, report the matter to the MEC for local government in the province concerned.

Competitive bidding

In the event that a Municipality decides to provide a municipal service through a service delivery agreement, it must select the service provider through selection processes, which, *inter alia*, minimise the possibility of fraud and corruption.

ANNEXURE THREE

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.

Definitions

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

General conduct of councillors

2. 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.

Attendance at meetings

3. 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.

Sanctions for non-attendance of meetings

4. (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.

Disclosure of interests

5. (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
 - (h) 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.

Personal gain

6. (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.

Declaration of interests

7. (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.

Full-time councillors

8. 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.

Rewards, gifts and favours

9. 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.

Unauthorised disclosure of information

10. (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.

Intervention in administration

11. 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 purposeful 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.

Council property

12. 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.

Duty of chairpersons of municipal councils

13. (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 subitem (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.

Breaches of Code

14. (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 8 of 1947). may be applied to an investigation in terms of subitem (3).
- (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;
 - (b) remove the councillor from office.
- (7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

Application of Code to traditional leaders

15. (1) Items 1.2,5,6, 9(b) to (d). 10, 11, 12, 13 and 14(1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81 of the Municipal Structures Act.
- (2) These items must be applied to the traditional leader in the same way they apply to councillors
- (3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may-
 - (a) issue a formal warning to the traditional leader; or
 - (b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.
- (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 right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.
- (5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).
- (6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the

traditional leader's right to participate in the council's proceedings, the MEC may—

- (a) suspend that right for a period and on conditions determined by the MEC; or
 - (b) cancel that right.
- (7) Any investigation in terms of this item must be in accordance with the rules of natural justice.
- (8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81 (3) of the Municipal Structures Act.

ANNEXURE FOUR

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

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 councillor, 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 councillor 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.

ANNEXURE FIVE

UNIFORM STANDING PROCEEDINGS SPECIAL COMMITTEE TO INVESTIGATE AND MAKE FINDINGS ON ANY ALLEGED BREACHES OF THE CODE OF CONDUCT

1. That the following uniform standing proceedings be adopted for the imposition of a fine or the removal of a Councillor as envisaged in Section 4 of the Code of Conduct contained in the Local Government: Municipal Systems Act

A. Any allegation or report that a Councillor has:-

- (i) failed to attend a meeting or meetings of the Council or of a Committee of which that Councillor is a member, in contravention of the Code of Conduct and/or the Standing Rules and Orders of the Council; or
- (ii) failed to remain in attendance at a meeting of the Council or of a Committee of which that Councillor is a member, in contravention of the Code of Conduct and/or the Standing Rules and Orders of the Council;

shall be submitted to the Municipal Manager. In this context report means a report submitted by an Official of the Council acting in pursuance of his or her duties.

B. The Municipal Manager shall investigate the allegation or report and shall:-

- (i) in the case of an allegation, decide whether or not the allegation has substance on the balance of probabilities and, if he decides that it does not have substance:-
 - (a) notify the person who made the allegation accordingly and provide that person with the reasons for his decision; and
 - (b) inform the person who made the allegation that he or she has the right to require that the allegation be referred to the Council's Rules Committee for investigation, and that such right may be exercised by the person concerned by submitting to the Municipal Manager, within 14 days of receipt of the notification referred to in (a) above, a written request that the allegation be referred to the Rules Committee;

- (ii) in the case of a report, decide whether or not the report has substance on the balance of probabilities and, if he decides that it does not have substance, the matter shall be considered to be closed.
- C. On receipt by the Municipal Manager of a request referred to in B(i)(b) above, the matter shall be dealt with in accordance with the procedure referred to in D to K below, with necessary changes.
- D. If, in the opinion of the Municipal Manager, the allegation or report is valid on the balance of probabilities, the Municipal Manager shall:-
- (i) notify the Councillor that is the subject of the allegation or report, in writing, that in his opinion, on the balance of probabilities, the Councillor concerned has breached the Code of Conduct by:-
 - (a) not attended a meeting of the Council or of a Committee which that Councillor is required to attend, in contravention of the Code of Conduct and/or the Standing Rules and Orders of the Council; and/or
 - (b) failing to remain in attendance at such a meeting, in contravention of the Code of Conduct and/or the Standing Rules and Orders of the Council; and/or
 - (c) being absent from three or more consecutive meetings of the Council, or from three or more consecutive meetings of a Committee, which that Councillor is required to attend in terms of section 3 of the Code of Conduct;

and shall specify the meetings concerned, in such notice;
 - (ii) inform the Councillor concerned of the penalties set out in the Code of Conduct and/or the Standing Rules and Orders of the Council for the breach or breaches referred to in (i) above;
 - (iii) advise the Councillor concerned that is his intention to refer the alleged breach or breaches of the Code of Conduct to the Council's Rules Committee for that Committee to investigate and make a finding on the alleged breach or breaches and to make appropriate recommendations to the Council; and
 - (iv) advise the Councillor concerned that he or she may, within a period not exceeding 14 days of the date of such advice, submit in writing to the Municipal Manager any representations he or she may wish to make to the Rules Committee in regard to the breach or breaches.
- E. As soon as practical after the expiry of the period referred to in D(iv) above for the submission of representations, the Municipal Manager shall convene a meeting of the Rules Committee to deal with the alleged breach or breaches of the Code of Conduct, and shall-

- (i) give the Councillor that is the subject of the allegation at least 7 days notice of the place, time and date of the meeting; and
 - (ii) inform the Councillor concerned that he or she may attend the meeting of the Rules Committee to present and dispute information and arguments.
- F. At the meeting of the Rules Committee referred to in E above (or any postponement or adjournment thereof) the Rules Committee shall investigate and make a finding on the alleged breach or breaches and shall make appropriate recommendations in that regard to the Council.
- G. In the course of the meeting of the Rules Committee referred to in E above, the Rules Committee may, if it considers it appropriate, provide the Councillor that is the subject of the investigation with the opportunity to obtain assistance and, in serious or complex cases, legal representation, it being recorded that this requirement does not place an obligation on the Council to meet the cost of obtaining such advice, or imply that the Council will meet such costs.
- H. If a Councillor wishes to obtain legal representation, the Councillor concerned shall notify the Municipal Manager accordingly and the Council shall also be entitled to obtain legal representation.
- I. On the conclusion by the Rules Committee of its investigation referred to in E above, the Municipal Manager shall submit the recommendations of the Rules Committee on the subject to the Council for determination.
- J. As soon as practical after the Council has determined the matter, the Municipal Manager shall inform the Councillor concerned of the decision of the Council, and shall notify that Councillor that in terms of section 14(3) of the Code of Conduct:-
 - (i) he or she may, within 14 days of having been notified of the decision of the Council, appeal to the MEC for local government in writing setting out the reasons on which the appeal is based; and
 - (ii) a copy of the appeal must be provided to the Council.
- K. The Municipal Manager or the Rules Committee, as the case may be, may if it is reasonable and justifiable in the circumstances, vary the procedures referred to in A to J above. In determining whether a departure from those procedures is reasonable and justifiable, the following factors must be taken into account:-
 - (i) the objects of the empowering legislation;
 - (ii) the nature and purpose of, and the need to take, the proposed action;
 - (iii) the likely effect of the action;
 - (iv) the urgency of taking the proposed action or the urgency of the matter; and
 - (v) the need to promote an efficient administration and good

governance.

ANNEXURE SIX

CONFIDENTIAL

Lesedi Local Municipality

DECLARATION OF INTERESTS

To be completed

1. *by all Councillors within 60 days of their election to the Council;*
2. *by senior management and staff within 14 days of their appointment to the municipality, and*
3. *thereafter, by all Councillors, senior management and staff on an annual basis within 14 days of the commencement of the financial year.*

After completion the form must be submitted to the Municipal Manager or his delegate.

I, the undersigned, hereby declare, the following financial interests held by me:-

No	Item	Details
1	Shares and securities in companies	
2	Membership of close corporations	
3	Interest in trusts	
4	Directorships	
5	Partnerships	
6	Other financial interest in business undertakings	

7	Employment and remuneration	
8	Interest in property	
9	Pension	
10	Subsidies, grants and sponsorships by organisations	

Name : _____

Signature : _____

Date : _____

CONFIDENTIAL

Lesedi Local Municipality

DECLARATION OF DETAILS OF GIFTS OF FAVOURS RECEIVED

To be completed by Councillors, senior management and staff within 14 days of receipt of any gift or favour given to them by any service provider or potential service provider above a value determined from time to time by the Anti-Fraud and Corruption Committee.

After completion the form must be submitted to the Municipal Manager or his delegate.

I, the undersigned, hereby declare, that I have received the following gift or favour from a service provider or potential service provider of the Municipality

Description of Gift/Favour	Estimated value	Name of service provider or potential service provider

Name : _____

Signature : _____

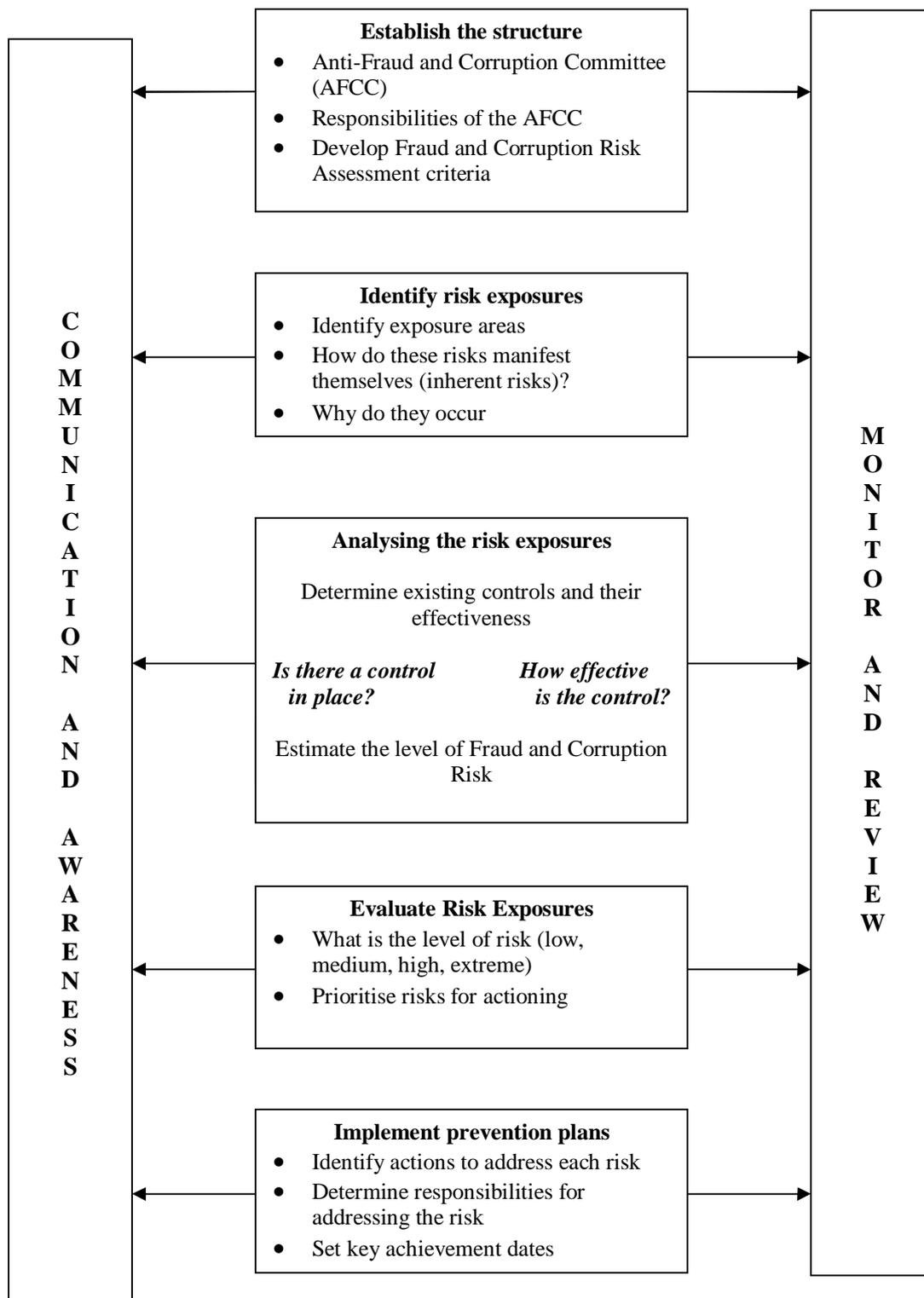
Date : _____

ANNEXURE EIGHT

FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS

The fraud and corruption risk assessment will be conducted using the following framework:

Fraud and Corruption Risk Assessment Process



The following is a more detailed summary of each of the steps of the risk assessment process as set out in the Figure above having regard to the particular application of the process to the assessment of fraud and corruption risk:

(i) Establishing the structure

This involves establishing an Anti-Fraud and Corruption Committee that will oversee the implementation of anti-fraud and corruption strategies and ensure that Fraud and Corruption Risk Assessments occur.

(ii) Identifying risk exposures

The objective of this phase is to generate a register (the Fraud and Corruption Risk Register) of all possible inherent risks for subsequent analysis. All inherent risks identified should be documented at this point regardless of whether a preliminary assessment concludes that internal controls currently in force will be fully effective in mitigating the risk. How each risk manifests itself should be documented as well as why it occurs.

(iii) Analysing the risk exposures

All internal controls that are currently in force and which would tend to have the effect of mitigating the risk of fraud and corruption under consideration will be recorded. The effectiveness of all mitigating internal controls will then be assessed. The assessment should conclude, in relation to each control, whether it is or is likely to be:

- Unsatisfactory; or
- Weak; or
- Satisfactory; or
- Good; or
- Very Good

in mitigating the risk to which it relates.

The assessment of each internal control considered should not represent an assessment of the control in terms of its ability to mitigate business risk generally. Rather, it is an assessment of that control's perceived impact on the specific fraud or corruption risk under consideration.

(iv) Evaluating the risk exposures

Each risk exposure will be evaluated (high, medium, low) and this will allow the Municipality to prioritise which risk exposures require immediate action.

(v) Implementing prevention plans

All fraud and corruption risks rated as "High" and "Extreme" will require the development and implementation of proposed action aimed at achieving one or more of the following:

- Alteration to existing internal control procedures;
- Introducing new internal control procedures; and
- Introducing procedures aimed at detecting and preventing fraud.

Proposed action may also be developed in relation to risks assessed as being of a lower level of residual risk. All actions proposed by the risk assessment team will be evaluated by senior management, as appropriate, prior to implementation. Implementation will also be monitored periodically by the Anti-Fraud and Corruption Committee.

