



## **MANTSOPA LOCAL MUNICIPALITY**

### **FRAUD PREVENTION STRATEGY**

<b>Operational Area</b>	<b>All Departments</b>
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## **1. Introduction**

1.1 Mantsopa Local Municipality ("the Municipality") emphasizes a regulatory environment consisting of a large body of legislation, regulatory prescripts and programmes applicable to Local Government, which includes, but not limited to:

- The Municipal Finance Management Act, No 56 of 2003 ("MFMA")
- The Municipal Systems Act, No.32 of 2000
- Municipal Structures Act of 2009
- The King Report on Corporate Governance for South Africa ("King IV")
- The Companies Act, Act No 71 of 2008 ("the Companies Act")
- The Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 ("PCCA")
- The Prevention of Organised Crime Act, Act No 121 of 1998 ("POCA")
- The Financial Intelligence Centre Act of 2017 ("FICA")
- The Protected Disclosures Act, Act No 26 of 2000 ("PDA")
- The Promotion of Access to Information Act, Act No 2 of 2000 ("PAIA")
- The Promotion of Administrative Justice Act, Act No 3 of 2000 ("PAJA")
- The Preferential Procurement Policy Framework Act, Act No 5 of 2000 ("PPPFA")
- Constitution of the Republic of South Africa, Act No 108 of 1996
- The Local Government Anti-Corruption Strategy ("LGACS")
- The Code of Conduct for Municipal Employees and Councilors.

1.2 The Municipality's Fraud Prevention Strategy is devised to focus on compliance with this regulatory framework and best practice prescriptions.

1.3 To render Fraud and Corruption Risk Management a dynamic tool in the management of the operations of the Municipality, the following needs to be taken into consideration:

- Ensuring that Fraud and Corruption Risk Management is an integral part of planning and management processes

- Informing, training and motivating all employees to empower them for an appropriate implementation of effective Fraud and Corruption Risk Management practice
- Maintaining a cost / benefit focus when developing Fraud and Corruption Risk mitigating strategies
- Identifying all stakeholders as part of the overall Fraud and Corruption Risk Management process using consultations and appropriate communication systems.
- Applying best operating practices consistently.

1.4 It is important to note that this Fraud Prevention Strategy is supplementary to the general Risk Management Strategy and should be read in conjunction with the Risk Management Strategy. As such, it does not repeat what is already contained in the Risk Management Strategy, but focuses on aspects relating specifically to Fraud Risk in the Municipality's environment and provides an overview of aspects in that environment of which the Municipality has to take into consideration in ensuring effective Fraud risk management.

1.5 The essence of this approach of introducing this Fraud Prevention Strategy is to enable:

- Pro-active determination of fraud and corruption
- Pro-active detection of fraud and corruption risks wherever it may exist
- Pro-active implementation of controls to mitigate such fraud and corruption risks
- Reactive detection of the occurrence of fraud and corruption
- Reactive investigation of the occurrence of fraud and corruption
- Reactive implementation of controls to prevent the recurrence of fraud and corruption.

## **2. The values underlying this Strategy**

### **2.1 Executive Commitment**

2.1.1 Mantsopa Local Municipality is committed to the principles of integrity and good governance in complying with its mandate. As such the Municipality has taken it upon itself to create an environment and atmosphere that is zero tolerant to fraud and corruption. Any misconduct by employees is not only

considered as possible criminal acts, but as actively working against corporate goals and tarnishing the reputation and credibility of the Municipality.

**2.1.2** It is the policy of Mantsopa Local Municipality that fraudulent activities should be prevented where possible. The ultimate responsibility of preventing and detecting fraud rests with the Accounting Officer and Senior Management:

- Management must ensure that they implement adequate controls to prevent, detect and investigate fraud
- Management will conduct regular risk assessments to ensure that internal controls are operating effectively to mitigate the identified risks
- Managers are expected to stay alert, recognise risks and exposures inherent in their area of responsibility and be aware of signs of fraudulent acts.

**2.1.3** The Municipality, through appropriate channels, will maintain this plan and communicate all the policies and procedures to guide expectations of conduct by all employees. Management must ensure that all employees and stakeholders have access to this plan and that suitable training is provided. Employees and stakeholders must make sure that the plan is read and understood, and act in line with this plan.

## **2.2 Zero tolerance**

**2.2.1** It is the policy of Mantsopa Local Municipality that a zero-tolerance approach to fraud is practiced. Each instance will be investigated and followed up by the application of all remedies available to the Municipality within the full extent of the law.

**2.2.2** The Accounting Officer will deal firmly and quickly with any person who is involved in a fraudulent act. The Accounting Officer, in consultation with the Director Corporate Services will decide on the type of investigation. The Accounting Officer will also refer the matter to the South African Police Service if he / she suspects any criminal activity has been carried out.

**2.2.3** Suspected perpetrators, including external parties, who by omission, deceit, falsehood or other dishonest means, defraud the Municipality, whether successful or not, of any assets, information or any other valuables, will be subject to a full investigation and possible prosecution. Employees of the Municipality found to have participated in any fraudulent activity will be subject to disciplinary action, including termination of employment and prosecution. The Municipality will ensure that any internal proceedings do not prejudice any criminal case.

**2.2.4** The Municipality will take appropriate legal recourse to recover losses or damages arising from fraud.

**2.2.5** All recourse and actions will be taken within the constitutional context in which the Municipality operates with due regard to the principles of fairness and administrative justice.

### **2.3 Creating a culture of fraud prevention**

**2.3.1** The Code of Conduct for Municipal Employees sets out the standard of conduct expected of staff members. It is the responsibility of each staff member to be fully conversant with the Code. Together with the Fraud Prevention Strategy, the Code of Conduct will assist in promoting a fair and honest working environment in the Municipality.

**2.3.2** The Municipality's employees and suppliers/service providers have an important part to play in dealing with fraud and are strongly encouraged to provide information if they suspect a case of fraud.

**2.3.3** The Municipality will deal with all information fairly and confidentially. It will endeavor not to reveal the names of the people who provide the information. The Municipality's Policy on Whistle-blowing sets the guidelines in this regard.

**2.3.4** The Municipality will ensure that any reporting or investigative process is not misused and, therefore, any abuse, such as raising unfounded malicious allegations, will be dealt with as a disciplinary matter.

**2.3.5** The Municipality's employees shall, within the parameters of their respective authority, render appropriate support and assistance to investigations undertaken by Internal Audit and / or other internal or external parties and take the necessary steps to facilitate free access to the Municipality's premises, equipment and information sources as may be requested by the same.

## **3. The legislative framework underlying this Plan**

### **3.1 The Constitution**

**3.1.1** Section 195 of the Constitution lays down the values and principles that govern public administration. These values and principles include:

- A high standard of professional ethics
- Efficient, economic and effective use of resources
- Services must be provided impartially, fairly, equitably and without bias

- Public administration must be accountable
- Transparency must be fostered by providing the public with timely, accessible and accurate information.

## **3.2 The MFMA**

**3.2.1** The MFMA makes provision for transparency, accountability and sound management of revenue, expenditure, assets and liabilities of the local government institutions. It states that the Municipal Manager is the Accounting Officer for the Municipality. It places obligations on the Municipal Manager and other Municipal officials to inter alia ensure effective, efficient and transparent systems of financial and risk management and internal control; and an effective system of internal audit.

**3.2.2** Section 1 of the MFMA defines an “accounting officer” as:

- The Municipal Manager of a municipality, or a person acting as Municipal Manager
- The Accounting Officer of a municipal entity, or a person acting as the Accounting Officer of a municipal entity.

**3.2.3** In terms of section 60 of the MFMA the Accounting Officer of the municipality must:

- Exercise the functions and powers assigned to an accounting officer in terms of the MFMA
- Provide guidance and advice on compliance with the MFMA to:
  - The political structures, political office-bearers and officials of the Municipality
  - Any municipal entity under the sole or shared control of the Municipality.

**3.2.4** In terms of section 62 of the MFMA the Accounting Officer of a municipality must inter alia take all reasonable steps to ensure:

- Effective, efficient and economic use of resources
- Keeping of full and proper records of the financial affairs of the Municipality
- Maintenance of effective, efficient and transparent systems of Financial and risk management, internal control and Internal audit

- Prevention of unauthorised / irregular / fruitless and wasteful expenditure / other losses
- Disciplinary / criminal proceedings against any official who commits an act of financial misconduct.

**3.2.5** The MFMA includes severe sanctions for Accounting Officers who fail to comply with the obligations prescribed by the Act. Section 173(1) stipulates that an Accounting Officer is guilty of an offence if he/she deliberately or in a grossly negligent way:

- Fails to take all reasonable steps to prevent unauthorised / irregular / fruitless and wasteful expenditure
- Fails to take all reasonable steps to prevent corruptive practices in management of assets or receipt of money and the implementation of the supply chain management Strategy.

**3.2.6** Political interference in the management of local government structures is a common phenomenon and often severely hampers the efficient running of local government. The MFMA recognises this, and in order to allow Accounting Officers to freely and without fear of undue interference manage the affairs of local government, has provided sanctions to prevent such interference. To this end, section 173(4) of the MFMA provides that a councilor is guilty of an offence if he / she:

- Deliberately influences or attempts to influence the Accounting Officer / Chief Financial Officer / other official to contravene the MFMA or not comply with the MFMA
- Interferes in the financial management responsibilities or functions of the Accounting Officer / Chief Financial Officer
- Interferes in the financial management responsibilities or functions of the Accounting Officer/ Chief Financial Officer of a municipal entity
- Interferes in the management or operational activities of a municipal entity.

**3.2.7** Section 32 of the MFMA further provides that a political office-bearer / Accounting Officer / other official may be held liable for unauthorised / irregular / fruitless and wasteful expenditure deliberately or negligently incurred / committed / made / authorised by him / her.

**3.2.8** The MFMA defines “fruitless and wasteful expenditure” as expenditure that was made in vain and would have been avoided had reasonable care been exercised.

### **3.3 King IV**

**3.3.1** King IV has been developed as an initiative of the Institute of Directors in Southern Africa. It represents a revision and update to the initial King Report first published in 1994, in an attempt to keep standards of governance applicable in South Africa current with changing circumstances, both internationally and at national level. Its publication is a reflection of the South African business community and public sector’s desire to ensure that local governance standards keep pace with the rest of the world and serve as a contribution to the country’s ongoing development.

**3.3.2** King IV emphasises the importance of striking a balance between “*performance*” (i.e. decisions and actions designed to ensure the creation and protection of value) and “*conformance*” (i.e. the demonstrable adherence to due process in coming to such decisions and taking such actions). In a corporate context, this means that the exercise of management’s skill, expertise and flair in running business operations and creating shareholder value should be encouraged, but must be subject to appropriate checks and balances that allow the Board to ensure that management is at all times acting in the interests of the organisation and its stakeholders.

**3.3.3** King IV principles as identified:

- **Ethical culture** - The council should lead ethically and effectively.
- **Good performance** - The council should govern the ethics of the municipality in a way that supports the establishment of an ethical culture.
- **Effective control** - The council should ensure that the municipality is and is seen to be a responsible corporate citizen.
- **Legitimacy** - The council should appreciate that the municipality’s core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.

**3.3.4** King IV is primarily targeted at listed companies, financial services companies and public sector entities. The guidelines and principles it contains are, however, as applicable to other, non-designated entities that seek to take governance seriously, as they provide a sound basis for the successful

running of any organisation. King II advocates a pro-active approach to governance that promotes focus on creating future value. Organisations should therefore apply the guidance offered by King II, not so much because they are obliged to comply, but rather because they see the benefit and value for the organisation in doing so.

**3.3.5** Each corporate entity should demonstrate commitment to its Organisational Integrity / Code of Ethics by:

- Creating systems and procedures to introduce, monitor & enforce its Code
- Assigning high level individuals to oversee compliance with the Code
- Assessing the integrity of new appointees in selection and promotion procedures
- Exercising due care in delegating discretionary authority
- Communicating with and training all employees regarding enterprise values, standards and compliance procedures
- Providing, monitoring and auditing safe systems for reporting of unethical or risky behavior
- Consistently enforcing appropriate discipline
- Responding to offences and preventing recurrences.

**3.4 The Prevention and Combating of Corrupt Activities Act**

**3.4.1** Mantsopa Local Municipality recognises the principles underlying the PCCA, as embodied in the preamble thereto and which include that corruption:

- Undermines individual rights enshrined in the Constitution
- Endangers the stability and security of societies
- Undermines the institutions and values of democracy
- Undermines ethical values and morality
- Compromises sustainable development
- Compromises the rule of law and the credibility of governments
- Provides a breeding ground for organised crime.

**3.4.2** Apart from creating a general offence of corruption in section 3, the PCCA also creates several specific categories of corruption relevant to the sphere of operations of the Municipality, including:

- Offences in respect of corrupt activities relating to public officers (section 4)
- Offences in respect of receiving or offering of unauthorised gratification by or to party to an employment relationship (section 10)
- Offences in respect of corrupt activities relating to contracts (section 12)
- Offences in respect of corrupt activities relating to procuring and withdrawal of tenders (section 13)
- Offences relating to the acquisition of a private interest in a contract, agreement or investment of a public body (section 17).

**3.4.3** The Municipality subscribes to the spirit of the PCCA by seeking to implement measures to prevent and combat corruption.

### **3.5 The Prevention of Organised Crime Act**

**3.5.1** The Municipality recognises the principles underlying POCA, as embodied in the preamble thereto and which include that:

- There is a rapid growth of organised crime, money laundering and criminal gang activities nationally and internationally and that organised crime has internationally been identified as an international security threat
- Organised crime, money laundering and criminal gang activities infringe on the rights of the people as stated in the Bill of Rights
- It is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activities of violent gangs and individuals
- Organised crime, money laundering and criminal gang activities, both individually and collectively, present a danger to public order and safety and economic stability, and have the potential to inflict social damage
- No person should benefit from the fruits of unlawful activities, nor is any person entitled to use property for the commission of an offence.

**3.5.2** The Municipality subscribes to the spirit of POCA, including section 7, which places an obligation on any person who carries on a business or is in charge of, or manages a business undertaking or who is employed by a business undertaking and who suspects or ought reasonably to have suspected that:

- any property which comes into his or her possession or the possession of the said business undertaking is, or forms part of, the proceeds of unlawful activities
- a transaction to which he or she or the business undertaking is a party will facilitate the transfer of the proceeds of unlawful activities
- a transaction to which he or she or the business undertaking is a party and which is discontinued-
  - may have brought the proceeds of unlawful activities into possession of the person or business undertaking; or
  - may have facilitated the transfer of the proceeds of unlawful activities, had that transaction been concluded,

to report his or her suspicion and all available information concerning the grounds on which it rests, within a reasonable time to the Financial Intelligence Centre and shall take all reasonable steps to discharge such obligation.

### **3.6 The Financial Intelligence Centre Act**

**3.6.1** The Financial Intelligence Centre Act was enacted to facilitate the reporting duty contained in the POCA.

**3.6.2** In terms of section 21 of the FICA an accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps:

- To establish and verify the identity of the client
- If the client is acting on behalf of another person, to establish and verify the identity of that other person; and the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person
- If another person is acting on behalf of the client, to establish and verify the identity of that other person; and that other person's authority to act on behalf of the client.

**3.6.3** In addition, section 29 places an obligation on a person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that:

- The business has received or is about to receive the proceeds of unlawful activities

- A transaction or series of transactions to which the business is a party:
  - facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities
  - has no apparent business or lawful purpose
  - is conducted for the purpose of avoiding giving rise to a reporting duty under the FICA
  - may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service
- The business has been used or is about to be used in any way for money laundering purposes

to report to the Financial Intelligence Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

**3.6.4** According to the definition of an “accountable institution” as contained in the FICA, the Municipality qualifies as such an accountable institution and is subject to these provisions.

### **3.7 The Protected Disclosures Act and the Promotion of Access to Information Act**

**3.7.1** The Protected Disclosures Act was originally drafted as part of what was intended to be the “Open Democracy Act”. This draft act was later split in two acts, ie the Promotion of Access to Information Act, No 2 of 2000, and the Protected Disclosures Act, No 26 of 2000.

**3.7.2** The PDA stems from the following labour law principles, which are also contained in the preamble thereto:

- Every employee has a responsibility to disclose criminal and any other irregular conduct in the workplace
- Every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.

**3.7.3** The PDA provides protection for protected disclosures, in that if a disclosure is protected it means that any occupational detriment that the employee who made the disclosure subsequently suffers as a result of the disclosure will attract a legal remedy. Occupational detriment is very widely defined by the PDA and includes harassment, dismissal, transfer against the will of the employee, non-promotion, a denial of appointment, or otherwise adverse effect.

**3.7.4** The protection afforded by the PDA includes:

- People who are victimised in breach of the Act, whether they are dismissed or not, can refer a dispute to the CCMA and thereafter to the Labour Court
- People who are dismissed for making a protected disclosure can claim either compensation, up to a maximum amount of 2 years salary, or reinstatement
- People who are not dismissed but who are disadvantaged in some other way as a result of making a protected disclosure can claim compensation or ask the court for any other appropriate order.

**3.7.5** The aims of the PAIA, as stated in the preamble thereto, include:

- Fostering a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information
- Actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.

**3.7.6** The PAIA contains several provisions aimed at providing members of the public with access to information that they require to exercise or protect individual rights. The transparency created by these provisions serves to contribute to the responsible conduct of business and good governance by both public and private bodies.

### **3.8 The Promotion of Administrative Justice Act**

**3.8.1** The aims of the PAJA, as stated in the preamble thereto, include:

- Promoting an efficient administration and good governance
- Creating a culture of accountability, openness and transparency in the public administration or in the exercise of a public power or the

performance of a public function, by giving effect to the right to just administrative action.

**3.8.2** The PAJA defines “administrative action” as inter alia any decision taken, or any failure to take a decision, by an organ of state or a natural or juristic person, when performing a public function in terms of any empowering provision which adversely affects the rights of any person and which has a direct, external legal effect.

**3.8.3** The Municipality fulfils a public function in fulfilling its mandate and as such, it is subject to the review of its actions in terms of the PAJA.

### **3.9 The Preferential Procurement Policy Framework Act**

**3.9.1** The Preferential Procurement Policy Framework Act provides for the implementation of a preferential procurement policy by organs of state to give preference to persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

**3.9.2** In addition, the regulations issued in terms of the PPPFA provide that:

- An organ of state must, upon detecting that a preference in terms of the PPPFA and the regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract
- An organ of state may, in addition to any other remedy it may have against such a person:
  - recover all costs, losses or damages it has incurred or suffered as a result of that person’s conduct
  - cancel the contract and claim any damages which it has suffered as a result of having to make less favorable arrangements due to such cancellation
  - impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the tender
  - restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period of up to ten years.

**3.9.3** The Municipality subscribes to the goals and aim of the PPPFA in its procurement policies and procedures.

### **3.10 The Local Government Anti-Corruption Strategy**

**3.10.1** The Department: Provincial and Local Government launched the LGACS during 2006 with the objectives to:

- Encourage a culture within the local/district sphere of government where all employees, members of the public and other stakeholders continuously behave with and promote integrity in their dealings with, or on behalf of municipalities
- Improve accountability, efficiency, and effective administration within municipalities, including decision-making and management conduct which promotes integrity
- Development of anti-corruption capacity within municipalities
- Improve the application of systems, policies, procedures, rules and regulations within municipalities
- Change aspects within municipalities that undermine institutional integrity and facilitate unethical conduct, fraud and corruption and allow these to go unnoticed or unreported
- Encourage all employees and other stakeholders to strive toward the promotion of integrity and the prevention and detection of unethical conduct, fraud and corruption impacting or having the potential to impact on the local/district sphere of government.

**3.10.2** The strategy seeks to provide practical guidance on the parameters that should be considered when executing the public's business with the express intent to promote good governance and accountability.

**3.10.3** The underlying premise of the LGACS is concisely embodied in the following extracts from the foreword to the Strategy by Minister F S Mufamadi, the then Minister for Provincial and Local Government:

*"The initiative to promote good governance and accountability is premised on the principle that serving the public is fundamentally a privilege."*

*"As custodians of public institutions, we should attend to the long-term legitimacy of these institutions – a legitimacy that is prone to corrosion with every report of corruption or perception thereof."*

**3.10.4** The LGACS focuses on four main areas, i.e. the organisation, employees, other stakeholders and enforcement. Each of the four main focus areas of the LGACS includes specific aspects that municipalities need to address during

the reassessment of fraud and corruption risks, in the final corruption/fraud response strategy and in the implementation plan. These four focus areas include the following:

**3.10.5 Focus on the Organisation:**

- Effective implementation of the Code of Conduct for employees as prescribed in the Municipal Systems Act and the Municipal Structures Act which all municipal staff are expected to abide by
- Effective implementation of the Code of Conduct for Councilors as prescribed in the Municipal Systems Act, the Municipal Structures Act, and the Municipal Finance Management Act which all councilors are expected to abide by
- The systems, policies and procedures applicable to the local sphere of government
- Human Resources Policies and Procedures applicable to the local sphere of government
- Finance Policies and Procedures applicable to the local sphere of government
- Sound internal controls to prevent and detect unethical conduct, fraud and corruption
- Ongoing risk assessment and management, which includes systems relating to unethical conduct, fraud and corruption detection
- Internal and External Audit
- Physical and information security management.

**3.10.6 Focus on Employees:**

- Vetting
- Employee Induction Programs
- Obligatory Leave Periods
- Exit Procedures for Employees and Control over Assets.

**3.10.7 Focus on other Stakeholders:**

- The councilors
- The community
- Trading partners

- Employee representative Organisations
- SALGA.

### 3.10.8 Enforcement:

- Reporting and monitoring of allegations of unethical conduct, fraud and corruption
- Whistle-blowing which is intended to provide assurance to employees that Local Government is committed to protecting employees who report unethical conduct, fraud and corruption in good faith, from victimisation or other forms of intimidation
- Feedback to be given to whistle-blowers to provide assurance to whistle-blowers that all allegations of unethical conduct, fraud and corruption will be investigated.

### 3.10.9 The LGACS is specifically aimed at addressing irregularities relating to the following:

Systems issues: where a process/system exists, which is prone to abuse by employees, the public or other stakeholders, e.g.:

- Procurement fraud, e.g. irregular collusion in the awarding of tenders or orders for goods and/or services
- Deliberate non-compliance with delegation of authority limits
- Collusion in contracts management
- Disclosing confidential or proprietary information to outside parties.

Financial issues: i.e. where individuals or companies have fraudulently obtained money from the municipality, e.g.:

- Creditors fraud, e.g. diverting payments to incorrect creditors
- Suppliers submitting invalid invoices or invoicing for work not done
- Revenue fraud, e.g. irregular interception of payments received
- Payroll fraud, e.g. creation of "ghost employees"
- Theft of funds.

Equipment and resource issues: i.e. where municipality's equipment is utilised for personal benefit or stolen, e.g.:

- Theft of assets, e.g. computers, face value forms, etc

- Personal use of resources, e.g. telephones, internet, e-mail
- Irregular destruction, removal, or abuse of records (including intellectual property).

Other issues: i.e. activities undertaken by employees of Local Government, which may be against policies or fall below established ethical standards, e.g.:

- Soliciting gifts or favors from consultants or other suppliers, e.g. acceptance of "kickbacks"
- Conflicts of interest
- Nepotism
- Favoritism
- Deliberately omitting or refusing to report or act upon reports of any unethical conduct, fraud and corruption.

#### **4. Pro-active measures**

##### **4.1 Fraud and Corruption Prevention Policy**

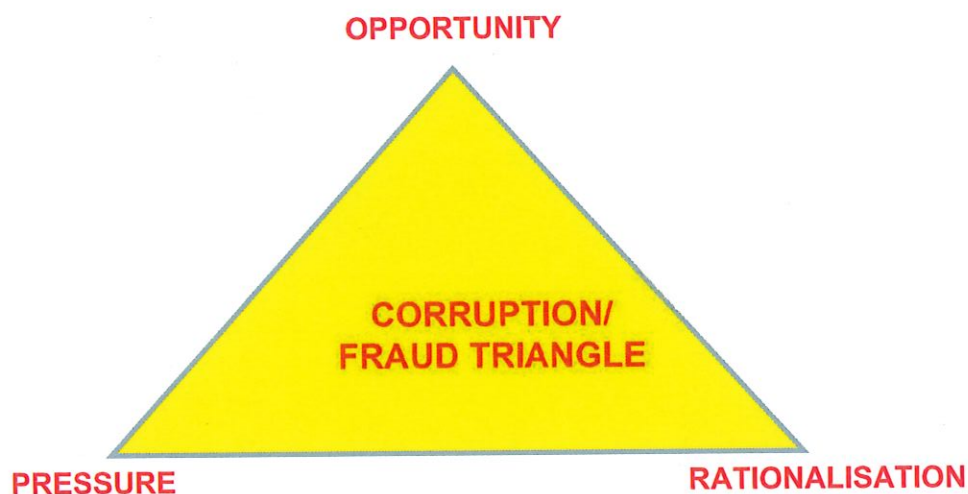
**4.1.1** Mantsopa Local Municipality subscribes to a zero-tolerance stance towards fraud and corruption. To this end, the Municipality adopts an integrated Fraud and Corruption Prevention Policy, which provides for inter alia the following aspects:

1. Definition
2. Introduction
3. Preamble
4. Objectives
5. Legal Framework
6. Scope of policy
7. Definition of corruption
8. Definition of fraud
9. Dimensions of fraud:  
Bribery, Embezzlement, Fraud, Extortion, Abuse of power, conflict of interest, Abuse of privileged information
10. Actions constituting fraud, corruption, theft and maladministration
11. Responsibility to conduct investigations
12. Reporting procedures and resolution of reported incidents
13. Protection of whistleblowers

14. False allegations
15. Harrasment or victimisation
16. Confidentiality
17. Anonymous allegations
18. Application of prevention controls and detection mechanisms
19. Training, education and awareness
20. Administration

#### **4.2 Pro-active identification of fraud and corruption risks**

- 4.2.1** It is generally recognised by industry experts that the motivation for committing fraud consists of three elements:



The threat of fraud and corruption is always present in the business processes of any entity and the optimum way to detect such irregularities lies in adopting a pro-active approach to identifying fraud and corruption risks.

- 4.2.2** Certain red flags may be present in the business processes of an entity, which may indicate the presence of fraud or corruption risks. All employees and stakeholders of the Municipality are encouraged to report the presence of such red flags that are observed in the Municipality's business processes.
- 4.2.3** The following red flags in respect of the lifestyle or conduct of employees may be cause for concern:
- Excessive lifestyle
  - Gambling, alcohol or drug problems
  - Staff who constantly claim underpaid

- Close relationships with suppliers
- Sole suppliers - not shopping around
- Poor credit rating
- Poor communication and reports
- Indulging in affairs
- Not taking leave
- Refusal of promotion
- Excessive & unexplained overtime
- Criminal record.

**4.2.4** The following red flags in respect of the organisational structure and processes may be cause for concern:

- Too much trust placed in key employees
- Limited segregation of duty
- Lack of clear job descriptions
- Lack of clear policies and guidelines
- No independent checks on reconciliation and payments
- No clear lines of authority or responsibility
- Proper authorization procedures not enforced
- Inadequate documentation and records
- Infrequent independent reviews
- Inadequate disclosure of interests & investments (not just directors)
- Management override of the controls
- Operating on a crisis basis
- Inadequate attention to detail.

**4.2.5** Absence of or deficiencies in the following in the procurement process in general may be cause for concern:

- Proper documentation
- Updating/interrogating of data on suppliers
- Independence between functions
- Proper approvals
- Controls over goods received and inventory
- Written policies on such controls
- Regular price and discount checks on contracts/invoices
- Competitive bidding
- Creditor statement reconciliations
- Payment controls.

**4.2.6** The presence of the following red flags in the selection of service provider/suppliers may be cause for concern:

- Competing bid prices close together
- Small supplier awarded large contract
- Location of supplier unusual
- Services rendered outside normal range of business
- Tenders accepted after closing date
- Changes to prices after awarding
- Procurement staff defensive about bid
- Relationships between supplier and staff
- Supplier has a poor reputation.

**4.2.7** The presence of the following red flags in the processes relating to the authorisation and order of goods and services in cases where a tender process should have been followed may be cause for concern:

- Failure to follow a tender process
- Incorrect processes and procedures
- Tender specifications that do not allow for competition
- Failure to apply criteria indicated in the tender documents during the evaluation process
- Incorrect award processes
- Failure by all parties involved to declare interest appropriately
- Incorrect recommendations made in terms of the process
- Tenders passed over without the existence of justifiable reasons
- Management of awarded contracts not in line with tenders issued, particularly in respect of payments to contractors.

**4.2.8** The presence of the following red flags in the processes relating to the authorisation and order of goods and services in cases where a quotation process should have been followed may be cause for concern:

- The prescribed number of written quotations were not obtained
- Quotations were not in fact obtained from different suppliers, but two or more quotations were not obtained from the same supplier fronting as different suppliers
- Quotations were not for the same or similar goods or services, or for goods or services of similar or comparable specifications, to the extent determinable from the documentation

- Quotations were obtained from current, former or retired employees or their relatives
- The contract was not awarded to the lowest bidder
- Specific requirements of the procurement policy were not adhered to.

**4.2.9** The presence of the following red flags in the processes relating to placing orders may be cause for concern:

- Orders were not placed on legitimate demand
- Orders are not consistent with normal usage patterns
- Correct processes and procedures were not followed during the order process
- Required documentation is not on record
- Prices of goods and services are not competitive
- Budgetary controls are not complied with
- Segregation between ordering, receipt and payment functions is not in place.

**4.2.10** The presence of the following red flags in the processes relating to the receipt of goods and services may be cause for concern:

- Goods and services ordered were not received
- Received goods and services were not properly accounted for, distributed and utilised
- Goods and services received are in not accordance with quotations, or tender or contract specifications
- Prices of goods and services are not in accordance with quoted, tendered or contracted prices
- Unusual deliveries (time / procedures)
- Procedures and security relating to goods received are not adhered to
- Stock shortages occur stock counts are not done, and adequate follow-up of shortages do not occur
- Stock movement controls are not in place/adhered to.

**4.2.11** The presence of the following red flags in the receipt and recording of invoices may be cause for concern:

- A service provider/supplier is dealt with outside the normal system
- Few details of the service are provided
- A service provider/supplier address is P.O. box or private residence
- A service provider/supplier address/phone is same as that of another supplier

- A service provider/supplier address/phone is the same as that of a staff member
- Invoices are photocopies
- Invoices are issued over weekends/on public holidays/after hours
- Over-invoicing
- A service provider/supplier does not offer the usual discounts for the particular industry.

**4.2.12** The presence of the following red flags in the payment processes may be cause for concern:

- Invoices tendered by the supplier are not in accordance with the relevant quotations, purchase orders and goods received vouchers
- Invoices are not approved for payment in accordance with the procurement policy
- Remittance advices are not in accordance with the relevant invoices tendered by the supplier
- Remittance advices are not supported by the required documentation
- Payments are not made in the normal course of business – management override of approval procedures.

#### **4.3 Creating and maintaining fraud and corruption awareness amongst employees and stakeholders**

**4.3.1** Mantsopa Local Municipality commits to creating and maintaining fraud and corruption awareness amongst employees by:

- Incorporating the definitions and descriptions of fraud, corruption and other forms of unacceptable conduct in the Fraud and Corruption Prevention Policy
- Disseminating the Fraud and Corruption Prevention Policy to all employees and require all employee to acknowledge on a regular basis that they are familiar with the Fraud and Corruption Prevention Policy
- Incorporating the Fraud and Corruption Prevention Policy in the induction of new employees
- Conducting regular fraud and corruption awareness education by means of internal correspondence and training sessions.

#### **4.4 Code of conduct for municipal councilors**

**4.4.1** An integral part of any Fraud and Corruption Risk Management Plan is the creation and nurturing of a zero-tolerance culture towards fraud and

corruption. Management must take active steps to instill a culture of fraud awareness and prevention amongst Municipal Councilors.

**4.4.2** Schedule 1 of the Municipal Systems Act contains a Code of Conduct for Councilors, which in terms of section 54 of the Act applies to every councilor of a municipality.

**4.4.3** Management should ensure that all Councilors sign and adhere to the Code of Conduct for Councilors.

**4.4.4** The Code of Conduct for Councilors should also form part of the induction of all new Councilors.

#### **4.5 Code of conduct for municipal employees**

**4.5.1** Schedule 2 of the Municipal Systems Act contains a Code of Conduct for Municipal Employees, which in terms of section 69 of the Act applies to every staff member of a municipality.

**4.5.2** Management should ensure that all employees sign and adhere to the Code of Conduct for Municipal Employees.

**4.5.3** The Code of Conduct for Municipal Employees should also be incorporated in all contracts of employment of new staff members.

#### **4.6 Implementing, maintaining and promoting an anonymous reporting hotline**

**4.6.1** Mantsopa Local Municipality commits to implementing an anonymous reporting hotline service, to enable employees to anonymously report suspicions of fraud or corruption.

#### **4.7 Implementing and promoting an effective Whistle-blower Policy**

**4.7.1** Employees are often the first to realise that there may be something seriously wrong within the Municipality. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Municipality. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

**4.7.2** Mantsopa Local Municipality is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees and others with serious concerns about any aspect of the

Municipality's work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis.

**4.7.3** Mantsopa Local Municipality has therefore adopted a Whistle-blowing Policy as part of the integrated Fraud and Corruption Prevention Policy to encourage and enable staff to raise serious concerns within the Municipality rather than overlooking a problem or blowing the whistle to the media or other external bodies.

**4.7.4** Any employee who suspects or becomes aware of any irregularity is encouraged to report his/her suspicion directly as follows:

<b>Allegation against</b>	<b>Report to</b>	<b>Alternative</b>
All staff members, excluding Executive Management	Director: Corporate Services	Internal Audit
Executive Management	Accounting Officer	Chairperson: Audit Committee
Accounting Officer	Chairperson: Audit Committee	Mayor

**4.7.5** Employees are encouraged not to discuss this information with any other person as this may prejudice the outcome of the investigation.

**4.7.6** Nobody should approach or confront the suspected individual/s and should also not attempt to locate or remove records and documents relevant to the suspicion.

#### **4.8 Conducting regular fraud risk assessments**

**4.8.1** Mantsopa Local Municipality commits to conducting fraud and corruption risk assessments across its operations on a regular basis to pro-actively identify fraud and corruption risks that may be present in its business processes.

**4.8.2** Where the presence of fraud and corruption risks is detected, the Municipality will design and implement controls to mitigate the occurrence and impact of such fraud and corruption risks.

#### **4.9 Fraud Awareness Training**

**4.9.1** Mantsopa Local Municipality will conduct fraud and corruption awareness on a regular basis. The purpose of the awareness is to sensitise employees on, amongst others:

- Required conduct and behaviour as indicated in this policy

- Reporting duties and the protection employees are entitled to
- When and how to report knowledge and suspicion of fraudulent or corrupt activities.

#### **4.10 Induction training**

**4.10.1** The Municipality's Human Resources Department will conduct induction training events for new appointees. A fraud and corruption awareness module will be included in the induction kit.

#### **4.11 Inculcating a culture of management responsibility for fraud risk management**

**4.11.1** Mantsopa Local Municipality recognises that the inculcation of a culture of management responsibility for the deterrence and detection of fraud and corruption is essential to the success of any fraud and corruption prevention strategy. In pursuance of this reality, the Municipality commits to implement the following measures:

- Including fraud and corruption risk management as a standing item for discussion on the agenda of management meetings
- Including fraud and corruption risk management in the evaluation criteria considered during the performance evaluation of members of the management of the Municipality.

### **5. Reactive measures**

#### **5.1 Investigation of all incidents of fraud and corruption**

Mantsopa Local Municipality commits to investigating all reported or suspected incidents of fraud, corruption and other financial misconduct. The investigation process will consist of the following steps:

##### **5.1.1 Confirm the initial suspicions and information**

The Director: Corporate Services will be responsible for performing the first step of the investigation process.

The first step is to confirm the veracity of the initial suspicion or allegation. This involves considering the integrity of the source of the information, the substance of the suspicion, and whether the informant may have had a personal or malicious motive. All suspicions will be followed up as a precautionary measure and will be considered seriously. As a rule, the

suspected employee will not be alerted until the issues have been properly considered and the Municipality is ready to seize evidence.

It is of utmost importance to limit any further loss immediately. To this end, the Chief Financial Officer and / or the Accounting Officer will consider measures such as the withdrawal of signatory rights on bank accounts, cancellation of access rights to data by specific individuals, the limitation of access to archives, etc. This consideration will override the need for confidentiality if further material loss is a real possibility.

The nature of the suspicion or allegation will be dealt with on a need-to-know basis. The case will not be reported to the South African Police Service or other prosecution authority until the internal verification has been completed or sufficient progress has been made. A firm decision on the resolution of the case will only be taken once the true facts have been established.

#### **5.1.2 Set investigation objectives**

Once the initial suspicion has been confirmed as valid, the Director: Corporate Services will set the investigation objectives. These could be one or more of the following:

- Taking disciplinary action against the perpetrator
- Taking disciplinary action against the supervisor of the perpetrator
- Laying criminal charges against the perpetrator
- Instituting civil action for recovery of losses
- Recovering losses from insurers
- Determining control weaknesses and how they were exploited
- Formulating and/or updating the internal policy and procedure to prevent future recurrence of fraud and corruption
- Tracking syndicate activity to the ultimate beneficiary
- Preventing future losses.

Usually, the Municipality will take the hardest line possible and ensure that there are sufficient resources to achieve this objective. It should be noted that the actual institution of the actions listed are dependent on the factual findings of the investigation.

#### **5.1.3 Determine the investigation team and set a budget**

The Director: Corporate Services will lead the investigation team.

In order to conduct an effective investigation, the Chief Financial Officer will consider involving the following experts:

- An external investigator
- An Internal Auditor
- A chartered accountant
- A labour lawyer
- A disputed document specialist
- An IT or data recovery specialist.

The Director: Corporate Services will consider involving such external experts in the following cases:

- In instances where specialist skills not available internally are required
- In instances where the investigation is of such a complex or extensive nature that the workload of internal resources does not allow for the speedy and effective finalisation of the investigation.

The investigation team will compile a list of the resources available and items required to discharge the applicable burden of proof, depending on the nature of the action considered.

In the case of larger investigations, a budget must be set for the investigation. This is especially the case where external consultants are contracted to perform the investigation.

#### **5.1.4 Plan the investigation – develop the “worst-case scenario”**

To plan the investigation the following questions must be answered:

- How was the fraud committed? Different scenarios, which fit the available facts, must be developed.
- Where important evidence might be found?
- Who appears to be involved in the fraud or its cover-up?
- Can we identify at least one person or third party against whom the evidence is strongest or most certain?
- Were similar patterns or suspicions discovered in the past?
- Who are the people or companies that received a benefit?
- Who will be required for the investigations, whether internal or external

specialists?

Each of the possible scenarios needs to be identified. For each possible scenario, document the elements of the crime and the requirements to prove the commission of that specific crime.

It is advisable to decide which of the scenarios is the "worst-case". The investigation team should then focus their efforts proving the "worst case" and by doing so should also be able to prove or disprove the other possible scenarios. For each scenario, the worst must be suspected of each individual who was involved in the transactions. Suspects will be cleared as evidence becomes available, but nobody should be disregarded prior to the investigation.

It is also advisable to consider aspects such as the possible adverse consequences of pursuing the investigation, as well as not pursuing the investigation.

The golden rule of the planning activity is not to "rush in", unless immediate action is required to prevent further losses or to stop vital evidence being destroyed.

#### **5.1.5 Prepare to strike – get background information without alerting the suspect(s)**

The investigation team should compile a file on each of the suspects or entities involved, and as much background information as possible that is obtainable without alerting the suspects. The files will include detailed background enquiries and may include items such as:

- Asset searches
- Credit enquiries
- Company searches
- Criminal record checks
- Contact and address details.

The investigation team also needs to consider the timing of activities, especially where the police or prosecuting authorities are conducting parallel investigations. The team will determine how, when and by whom the case should be reported to the police. Aspects to be borne in mind include the sensitivity of the matter, the completeness of evidence, and whether powers to subpoena documents or records are required. Assistance of the prosecution

authorities may also be required to conduct searches of premises and vehicles.

Simultaneously, the team will have to decide and explore the possibility of appropriate financial actions regarding the suspect, customers and suppliers who may be involved. This may include the suspension of legal agreements, the stopping of payments on outgoing cheques or obtaining special clearance on incoming cheques.

The final step in the preparation process is to present the plan, timing and budget allocation to the assigned person for approval in terms of the prescribed procurement procedure.

#### **5.1.6 Preparing for suspension and other HR actions before the strike**

The Director: Corporate Services and the investigation team will decide on the necessity to remove a suspected employee from the premises on commencement of the investigation. Factors to be taken into consideration are:

- The seriousness of the allegation
- The likelihood of the destruction of evidence or records
- The general awareness of the suspicions by other members of staff
- The seniority of the suspected employee
- Precedents set in similar instances.

As a general rule, employees will be suspended with full benefits. Depending on the specific circumstances, the following benefits will normally not be withdrawn during the period of suspension:

- The use of an official cell phone
- The use of an official vehicle
- Normal salary and fringe benefits.

The following privileges of employment will as a standard procedure be suspended pending the outcome of the investigation and/or any possible disciplinary proceedings:

- The use of a corporate credit card
- Access to the corporate computer system
- The use of an official PC or laptop

- Attendance of internal training courses
- The authority to sign cheques or any legal agreements on behalf of the Municipality
- Access to his / her office.

The Director: Corporate Services, in collaboration with the Manager: Human Resources, will be responsible for communicating these arrangements to both the suspended employee as well as the relevant external parties, e.g. the bank, the human resources department and the payroll department.

#### **5.1.7 The strike action – get all the evidence at once**

The strike action may include any of the following activities:

- Simultaneous visits to and interviews with witnesses and/or suspects
- Catching the criminals in the act
- Obtaining authority to conduct a trap and the execution thereof
- Obtaining documentary and other evidence required
- The recovery of property available for seizure
- The completion of all other items scheduled on the investigation plan
- Re-planning as new evidence is obtained.

One member of the investigation team will be responsible for co-ordinating and logging each document obtained and keeping track of its source, who obtained it and its relevance in terms of evidence. The three important aspects with regard to documentary evidence are:

- Preservation of evidence and continuity of possession
- The examination of documents
- The preparation of schedules.

It is vital that the investigation team does not draw any conclusions on the guilt or innocence of any party during the investigation.

One member of the investigation team will be made responsible for liaising with the South African Police Service. This liaison will include the sharing of evidence and leads as well as the communication of additional evidence required.

At this stage of the investigation it might be necessary to revisit each of the scenarios and re-evaluate the likelihood of each. It might also be necessary to conduct follow-up interviews with individuals previously consulted.

#### **5.1.8 Internal reporting**

Section 32(4) of the MFMA provides that the Accounting Officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of:

- Any unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality
- Whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure
- The steps that have been taken to recover or rectify such expenditure and to prevent a recurrence of such expenditure.

To enable the Accounting Officer to comply with this obligation, each stage of the investigation should be documented and weekly interim reports submitted to the Accounting Officer.

#### **5.1.9 Finalising the investigation**

The investigation team will ensure that all suspicions are cleared up, one way or the other. Other activities in the finalisation of the process may include:

- The sending of letters expressing gratitude to employees and third parties who assisted in the investigation
- A review of weaknesses that caused the problem, and implementing appropriate controls
- The secure retention of documents until all litigation has been completed
- The performance of a quality review on the investigation process
- Ensuring the proper filing and indexing of all records.

### **5.2 Laying of criminal charges**

#### **5.2.1** Section 34 of the PCCA creates a generic reporting obligation. It reads as follows:

*“Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed certain offences of corruption under this act; or the offence of theft, fraud,*

*extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official."*

**5.2.2** In addition, Section 32(6) of the MFMA, the Accounting Officer must report to the South African Police Service all cases of alleged:

- Irregular expenditure that constitute a criminal offence
- Theft and fraud that occurred in the Municipality.

**5.2.3** The Municipality subscribes to the policy of laying criminal charges in all cases where employees have been investigated for alleged dishonesty.

**5.2.4** Where an employee is acquitted in a disciplinary enquiry and the relevant senior manager feels that the outcome may be different in a criminal court, a decision in this regard will be made in consultation with the Human Resources Department.

### **5.3 Maintaining a crime database**

The Director: Corporate Services will be responsible for maintaining a Crime Database, including the nature of each allegation or finding, the amount involved, the identity of the suspect/s, the findings of the investigation and the sanctions applied.

### **5.4 Instituting civil proceedings**

**5.4.1** In terms of Section 32(1) of the MFMA, the Accounting Officer, other officials and the political office-bearers of a municipality are liable for unauthorised or irregular expenditure under certain circumstances:

- A political office-bearer of a Municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the Accounting Officer that the expenditure is likely to result in unauthorised expenditure, instructed an official of the Municipality to incur the expenditure
- The Accounting Officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer
- 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
- 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.

**5.4.2** In terms of Section 32(2) of the MFMA, a municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure:

- in the case of unauthorised expenditure, is authorised in an adjustments budget; or certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council
- in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

**5.4.3** The Director: Corporate Services will obtain legal advice regarding the viability of instituting civil action against the perpetrators to recover losses suffered by the Municipality as a result of unauthorised or irregular expenditure.

**5.4.4** The Director: Corporate Services will investigate the possibility of seizing an employee's pension benefits in accordance with the Pensions Act and all necessary steps will be taken to ensure that pension monies will be frozen pending the outcome of civil proceedings.

**5.4.5** The Director: Corporate Services will monitor legal proceedings instituted to ensure that same is finalised in a speedy and cost effective way.

## **5.5 Disclosure of the findings of investigations and press releases**

**5.5.1** It is the policy of the Municipality to disseminate the findings of investigations, especially where proof of irregularities has been found. For this purpose, and at the discretion of the Accounting Officer, summaries of findings may be published in newsletters or other official correspondence. Depending on possible legal action and other sensitivities, the Accounting Officer will decide on the appropriateness of doing this on a case-by-case basis.

**5.5.2** Only the Accounting Officer may authorise a press release on any issue relating to the investigation of commercial crime within the Municipality. Although the Accounting Officer may delegate the authority in this regard, all press releases will be carefully considered and reviewed by the Accounting Officer prior to issue.

## **5.6 Lodging of an insurance claim**

The Chief Financial Officer will be responsible for lodging a complete insurance claim with the Municipality's fidelity insurance and for conducting the following activities:

- To give preliminary notification to the insurance company on confirmation of the suspicion
- To advise the finance department that a claim has been submitted
- To obtain the insurance company's support for civil actions
- To monitor deadlines and prescription periods carefully
- To finalise the proof of loss
- To negotiate with the insurance company / loss adjuster.

## **5.7 Implementing corrective controls**

**5.7.1** Upon completion of any investigation the Director: Corporate Services will submit a detailed report to Management on the circumstances of the incident, root causes therefore, lessons learnt and recommended corrective controls to prevent recurrence of similar incidents.

**5.7.2** Management will consider such reports and, where necessary, implement appropriate corrective controls to prevent recurrence of similar incidents.

## **6. Continuous monitoring and updating of Fraud Prevention Strategy**

**6.1.1** The Chief Risk Officer will be responsible to continuously monitor compliance with the Fraud Prevention Strategy across the Municipality's operations.

**6.1.2** Should a situation arise that may necessitate the Fraud Risk Management Plan to be adapted to meet challenges posed by changing circumstances, the Chief Risk Officer will be responsible to make recommendations on proposed changes to Management for consideration.

## **7. ADMINISTRATION**

The custodian of this Fraud Prevention Strategy is the Accounting Officer who is supported in its implementation by all Heads of Department.

The Accounting Officer is responsible for the administration, revision, interpretation and application of this strategy. It will be reviewed annually and revised as required.