

# KWADUKUZA MUNICIPALITY



## ANTI-FRAUD AND CORRUPTION STRATEGY

FINANCIAL YEAR: **2025/2026**

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## 1. BACKGROUND

In recent years, government has stepped up its anti-corruption activities. Its efforts have become more systemic, with greater emphasis on instituting appropriate policy measures to prevent fraud and corruption. Anti-corruption has been a priority in the programme of government for many years.

The list below summarises the most significant domestic and international initiatives for government's action against corruption:

- a) The National Development Plan 2030 (NDP) boldly states that the vision for South Africa in 2030 is a country that has 'zero tolerance for corruption'. The plan states that key to fighting corruption is building a resilient anti-corruption system that is unencumbered by political interference; and ensuring that municipal officials are accountable and responsible, and that the public service as a whole is transparent and responsive.*
- b) The government's strategic plan for the 2014-2019 electoral term, the Medium Term Strategic Framework (MTSF), reflects the commitments made in the election manifesto of the governing party, including the commitment to implement the NDP. One of the key priorities that the 2014-2019 electoral mandate focuses on is fighting corruption and crime.*
- c) The United Nations Convention against Corruption (UNCAC) came into force in 2005. South Africa is one of 168 parties to the Convention. Some of the key features of the UNCAC are the requirements to take steps to prevent corruption; criminalise corruption; cooperate with other countries in the fight against corruption; and recover assets.*
- d) The African Union Convention on Preventing and Combating Corruption (AU Convention) was adopted in 2003 and came into force in 2005. South Africa ratified the Convention in 2004. The AU has a number of provisions similar to the provisions in the UN Convention against Corruption. The AU Convention requires signatories to establish, maintain and strengthen independent, national anti-corruption authorities or agencies.*
- e) The Organisation for Economic Co-operation and Development's Anti-bribery Convention (OECD Anti-bribery Convention) establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions.*
- f) The Southern African Development Community's Protocol against Corruption was adopted by heads of state at the August 2001 summit in Malawi. The SADC Protocol against Corruption provides for the prevention, detection and punishment of corruption. It also covers co-operation between states, and corruption in both the public and private sectors. The protocol recognises that demonstrable political will and leadership are*

*essential in the fight against corruption. It affirms the need to garner public support for initiatives to combat corruption.*

This strategy focuses mainly on KwaDukuza Local Municipality and looks at the implementation of employee's and Councillor's Codes of conduct, and improved enforcement of applicable systems, policies and procedures within KwaDukuza Local Municipality. It complements 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 strategy is also established to give effect to the various legislative instruments relating to fraud and corruption.

### ***1.1 Vision and Mission statement***

The strategy is intended to set down the stance of KwaDukuza Local Municipality towards fraud and corruption as well as to reinforce existing systems, policies, procedures, rules and regulations of KwaDukuza Local Municipality aimed at preventing, deterring, detecting, reacting to, and reducing the impact of fraud and corruption, where such dishonest activities exist.

The commitment of KwaDukuza Local Municipality to this strategy is for the protection of the public funds it administers and to achieve a reputation for maintaining good systems of internal controls that are determined to prevent and detect all forms of internal and external fraud and corruption committed against KwaDukuza Local Municipality.

KwaDukuza Local Municipality upholds the principles guiding the conduct of the holders of public service, some of which are:

- a) Integrity*
- b) Professionalism*
- c) Transparency*
- d) Accountability*
- e) Objectivity*
- f) Respect*
- g) Quality of service delivery and value for money.*

## **1.2 *Objective of the strategy***

The objectives of the strategy are to create a culture within the Municipality which promotes public service and discourages unethical conduct, fraud and corruption by:

- a) Creating a culture within the Municipality which is intolerant to unethical conduct, fraud and corruption*
- b) Preventing and detecting unethical conduct, fraud and corruption*
- c) Development of anti-corruption capacity within the Municipality*
- d) Investigating detected unethical conduct, fraud and corruption*
- e) Taking appropriate action in the event of such irregularities e.g. disciplinary action, recovery of losses, prosecution etc.*
- f) Applying sanctions, which includes redress in respect of financial losses*
- g) Providing a focus point for the allocation of accountability and authority*
- h) Encouraging all public servants and stakeholders to report suspicious fraudulent activities without fear of reprisals or recriminations*
- i) Strengthening community participation in the fight against fraud, theft and corruption by*
- j) Reinforcing transparency of the work of the Municipality and encouraging participation of civil society and community groups in oversight structures*
- k) Improving good governance and building resilient government through:*
- l) Improving the application of systems, policies, procedures, rules and regulations within the Municipality*
- m) Improving accountability, efficiency and effective administration within the Municipality, including decision-making and management conduct, which promotes integrity.*

## **1.3 *Fraud policy stance***

KwaDukuza Local Municipality has a zero-tolerance attitude to fraud and will do everything financially prudent to ensure that fraud, corruption or misconduct, cannot affect its assets and financial well-being. In keeping with the zero-tolerance approach, acts of fraud, corruption and misconduct will not be tolerated at any level. All fraud will be investigated and followed up by the application of all remedies available within the full extent of the law as well as the application of appropriate prevention and detection controls. These prevention controls include the existing financial and other controls, and checking mechanisms as prescribed in the systems, policies, procedures, rules and regulations of government

### **1.5 Responsibility of the municipal manager and senior management team**

The Municipal Manager bears the ultimate responsibility for fraud, corruption and risk management within KwaDukuza Local Municipality. This includes the coordination of **fraud** risk assessments, overseeing the investigation of suspected fraud and corruption, and facilitation for the reporting of such instances. The responsibility of the Municipal Manager and the senior management is to set the overall tone to reinforce the message that KwaDukuza Local Municipality has zero tolerance towards fraud and corruption as well as to:

- a) Establish an internal control system designed to eliminate or mitigate the fraud risks faced by KwaDukuza Local Municipality.*
- b) Establish and review a fraud control policy, including an appropriate control environment and a fraud response mechanism.*
- c) Develop a fraud risk profile for KwaDukuza Local Municipality and ensure regular review of fraud and corruption risks associated with Local Government and its processes.*
- d) Establish and monitor mechanisms for reporting suspected fraud.*
- e) Ensure that staff awareness of anti-fraud and anti-corruption policies is sufficient and that appropriate training is provided;*
- f) Ensure that investigations are carried out without delay for reported incidents of potential fraud; and*
- g) Ensure timely follow-up action and strengthening of preventative measures. Non-compliance with the requirements of provisions of this strategy is subject to appropriate disciplinary action.*

### **1.6 responsibility of all officials, councillors and service providers**

It is the responsibility of each official, Councillor and the service providers to ensure compliance with the strategy on the basis of zero tolerance towards fraud and corruption within KwaDukuza Local Municipality. Each official, Councillor and the service provider shall assist and cooperate in all preventative activities to prevent, detect and eradicate fraud and corruption, except where such assistance or co-operation is in breach of the officials, Councillors and the service's rights.

### **1.7 Partnerships with stakeholders in business and civil society sectors**

Partnerships with organised stakeholders in the business, labour, and civil society sectors, to curb corrupt practices by members of these sectors, must be reinforced.

Since Local Government is the sphere closest to the people and their most direct interaction with government, it is the actions and reactions of Councillors and Municipal officials which are, and will be, most closely scrutinised by communities and the media. It is therefore imperative that



KwaDukuza Local Municipality be equipped with the necessary tools and systems to minimise the scope for incidence of corruption and ensure responsiveness to allegations of corruption where they emerge. Communities thus have a vital role to play in the promotion of transparency and accountability at local level.

**Section 4 of the Municipal Systems Act 2000** describes in detail how and when participation should be sought from communities as the main stakeholders in municipalities. Participation should be approached bearing in mind the developmental role of Local Government.

The community and citizens in general should further be provided with a role in monitoring fraud and corruption through:

- a) Good governance;*
- b) Increased awareness;*
- c) Citizen empowerment;*
- d) “I Do Right - Even when nobody is watching” Campaign; and*
- e) Increased access to information.*

### **1.8 *Scope of the strategy***

All stakeholders with whom KwaDukuza Local Municipality interacts, are expected to abide by the principles contained in the strategy. The strategy applies to:

- a) Municipal officials (Officials and Councillors);*
- b) Suppliers, contractors and providers of goods and services;*
- c) Users of services/customers;*
- d) Stakeholders, Labour and social societies;*
- e) Business entities and civil society in general;*
- f) Media, organised religion; and*

All other persons with links to KwaDukuza Local Municipality.

## **2 CREATING AN ETHICAL CULTURE**

To reduce the motivation for and rationalization of fraud and corruption, KwaDukuza Local Municipality is committed to creating an ethical municipal culture and to providing guidance to officials and Councillors with regards to ethical conduct. Ethical conduct is about distinguishing between what is morally right and wrong with the purpose of doing what is right.

Officials and Councillors are expected to fulfil their obligations and conduct themselves to the highest ethical standards, which refer to the moral values

and qualities of integrity and honesty. The failure to uphold these standards often gives rise to allegations of corruption and maladministration.

Section 50 of the Municipal Systems Act sets out that “Local public administration is governed by the democratic values and principles embodied in section 195 (1) of the Constitution”. Section 195 (1) reads as follows:

“Basic values and principles governing public administration.

Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- a. A high standard of professional ethics must be promoted and maintained.*
- b. Efficient, economic and effective use of resources must be promoted.*
- c. Public administration must be development-oriented.*
- d. Services must be provided impartially, fairly, equitably and without bias.*
- e. People’s needs must be responded to, and the public must be encouraged to participate in policy-making.*
- f. Public administration must be accountable.*
- g. Transparency must be fostered by providing the public with timely, accessible and accurate information.*
- h. Good human-resource management and career-development practices, to maximise human potential, must be cultivated.*
- i. Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.”*

#### **2.5.1 The Ethical Foundations for Council’s Leadership Responsibilities**

KwaDukuza Local Municipality’s Council should provide effective leadership based on an ethical foundation. Ethical leaders should:

- a) Undertake their operations with the highest integrity;*
- b) Take account of KwaDukuza Municipality’s impact on internal and external stakeholders;*
- c) Ensure that all deliberations, decisions and actions are based on the values underpinning good governance: Responsibility, Accountability, Fairness and Transparency.*

Ethical Council should ensure that KwaDukuza Local Municipality is, and is seen to be, a responsible Municipality and should:

- a) Consider not only financial performance, but also the impact of KwaDukuza Local Municipality’s operations on the community and the environment through more comprehensive integrated reporting;*
- b) Protect, enhance and invest in the well-being of communities, the economy and the environment;*

- c) Ensure that KwaDukuza Local Municipality's performance and interaction with its stakeholders is guided by the Constitution, the Bill of Rights and Batho Pele principles;*
- d) Ensure that collaborative efforts with stakeholders are embarked upon to promote ethical conduct and good municipal citizenship;*
- e) Ensure that measurable municipal citizenship programmes are implemented;*
- f) Ensure that management develops municipal citizenship policies; and*
- g) Ensure that KwaDukuza Local Municipality encourages the participation of communities in its financial management policies.*

#### **2.5.2 Principles for Ethical Conduct for Senior Management**

A strong ethical culture means that municipal officials know what is expected of them, and need not stand paralyzed or confused when faced with ethical dilemmas, fostering a more satisfying and productive working environment.

These principles assist senior managers to improve the overall performance of official duties and responsibilities and help to maintain public confidence in the institutions:

- a) Senior managers should conduct themselves in a manner that will bear the closest public scrutiny, and so that their integrity serves as an example to other public officials;*
- b) Senior managers should abide closely to the ethics and legal framework of their institution, and encourage others to do the same;*
- c) Senior managers should encourage the scrutiny of their own conflict of interest situations, within the applicable framework;*
- d) Senior managers should demonstrate leadership commitment;*
- e) Senior managers should be prepared to enforce unpopular penalties and sanctions against members;*
- f) Senior managers must be prepared to exercise judgment when dealing with disclosure of private interests. In particular, they should consider the larger issue of institutional credibility and public trust.*
- g) When determining the most appropriate solution to resolve or manage the actual conflict situation, senior managers should weigh the interests of KwaDukuza Local Municipality, the public interest, and the legitimate interests of employees, and the nature of the conflict. When in doubt, senior managers should resolve conflicts in favour of the public interest.*

### 2.5.3 Approach to Managing Ethics for Senior Management

KwaDukuza Local Municipality can adopt a number of strategies to assist and support senior managers as they enforce ethics regulations:

- a) Clarify roles and responsibilities to avoid conflict: there is a need for clear definition of roles and responsibilities and delegations, and regular reporting to Council. A lack of clarity can lead to disputes and conflicts, and to maladministration. Reducing them to writing is essential.*
- b) Introduce incentives for enforcing punitive measures against offenders.*
- c) Create and sustain a culture of open communication and dialogue concerning integrity and its promotion.*
- d) Ensure that the policy remains effective and relevant in dealing with current and anticipated conflicts in a continuously evolving environment and change or redevelop the policy as necessary.*

Ultimately, it is up to officials and Councillors to encourage clean administration and ethical practices by undertaking all local affairs with the highest standards of integrity and ethical conduct; and through acting swiftly against alleged maladministration, fraud or corruption and using the support instruments to bring perpetrators to book.

## 3 UNDERSTANDING FRAUD

To understand initiatives for mitigating fraud, theft and corruption, one has to understand what is meant by, and what constitutes fraud, theft and corruption.

### 3.1 Defining fraud

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 document the term is used in its widest possible sense and is intended to include all aspects of economic crime and acts of dishonesty (including the legal definitions of fraud, theft and corruption).

In other words, fraud can be described as any conduct or behavior by a municipal official, other external parties, or entity that misleads others into providing a benefit that would normally benefit the municipal official, external parties or entity

### 3.1.1 Forms of fraud

**Fraud can be perpetrated by:**

**Management fraud:** Fraud involving one or more of the directors or members of management is referred to as management fraud. Management fraud may include collusion with third parties outside KwaDukuza Local Municipality.

**Employee fraud:** Fraud involving officials of KwaDukuza Local Municipality is referred to as employee fraud, but it may include collusion with third parties outside the Municipality.

**Fraudulent reporting:** Fraudulent reporting involves intentional misstatements or omissions of amounts or disclosures in reports in order to deceive the users of the report.

**Fraudulent events may involve:**

- a) Maladministration or financial misconduct in handling or reporting of money, financial transactions or other assets;*
- b) Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in the Municipal Finance Management Act (MFMA);*
- c) Disclosing confidential, proprietary, classified or restricted information to outside parties;*
- d) Irregularly accepting, requesting, offering or giving gifts of material value to or from contractors, suppliers, or other persons providing services/goods to KwaDukuza Local Municipality or its Programmes and/or Clients; and*
- e) Theft of funds, suppliers, or other assets.*

### 3.2 Maladministration

Maladministration is an important manifestation of unethical conduct in the South African public service. Maladministration by a person may be intentional or unintentional and can stem from a practice, policy or procedure of the Council. Maladministration means:

- a) conduct of an official, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or*
- b) conduct of a officials and Councillors involving substantial mismanagement of official functions; and includes conduct resulting from impropriety, incompetence or negligence; and*
- c) Maladministration is to be assessed having regard to relevant statutory provisions and administrative instructions and directions*

*The definition of maladministration is wide and can include:*

- i. *A delay in providing a service;*
- ii. *Incorrect action or failure to take any action;*
- iii. *Failure to follow processes and procedures or the law;*
- iv. *Failure to provide information;*
- v. *Inadequate record-keeping;*
- vi. *Failure to investigate;*
- vii. *Failure to reply;*
- viii. *Misleading or inaccurate statements;*
- ix. *Inadequate liaison; and*
- x. *Inadequate consultation.*

### 3.3 *Financial misconduct*

The Municipal Finance Management Act No. 56 of 2003 (MFMA) relates to the regulation of financial management in municipalities and other entities in the Local Government sphere. It is to ensure that all revenue, expenditure, assets and liabilities of those municipalities are managed efficiently and effectively. It provides for the responsibilities of persons entrusted with financial management in those municipalities and for connected matters.

Section 62(1)(e) of the MFMA provides that the Accounting Officer must take effective and appropriate disciplinary steps against any official in the service of the Municipality who has allegedly committed an act of financial misconduct or an offence in terms of chapter 15 (MFMA).

#### 3.3.1 *Corruption*

*Political Corruption vs Administrative Corruption*

**Political corruption** is the use of powers by government officials for illegitimate private gain. An illegal act by an officeholder constitutes political corruption only if the act is directly related to their official duties, is done under color of law or involves trading in influence.

This manifests in different ways: embezzlement of municipal funds, money laundering, bribery, invoicing and over estimation of a project and contract, and the sale or misuse of municipal property.

**Administrative corruption** is defined as "the abuse of roles, powers, or resources found within municipal bureaucracies. It may be initiated by line or staff officials, their superiors, or the agency clients." Corrupt practices in the administrative realm, such as bribery, extortion, patronage, and official theft can occur.

**a) Forms of Corruption:**

Corruption takes various forms; the following are examples of different types of corrupt activities:

- i. ***Bribery*** - involves a promise, offering or giving of a benefit that improperly affects the actions or decisions of a municipal official. A variation of this manifestation occurs where the Municipal official is offered or promised or given a benefit that improperly affects the actions or decisions of KwaDukuza Municipality.
- ii. ***Example:*** Soliciting of bribes by traffic officers from the public to avoid the issuing of traffic fines.
- iii. ***Embezzlement*** - involves theft of resources by persons entrusted with the authority and control of such resources
- iv. ***Example:*** Theft of Municipal funds.
- v. ***Extortion*** - involves coercing a person or entity to provide a benefit to a officials and Councillors, another person or an entity in exchange for acting or failing to act in a particular manner
- vi. ***Example:*** A police officers taking money from criminals to lose their case evidence.
- vii. ***Abuse of power*** - involves a municipal official using her/his vested authority to improperly benefit another municipal official, person or entity, or to improperly discriminate against another
- viii. ***Example:*** Promoting a "favourite" employee without following the regulated processes.
- ix. ***Conflict of Interest*** - involves a municipal official acting or failing to act on a matter where the municipal official, or another person or entity that stands in a relationship with the municipal official, has an interest
- x. ***Example:*** singling out a specific person/company for award of a contract or flouting the tender process in order to benefit himself or his partner/relative (who may be the director of the company).
- xi. ***Abuse of privileged information*** - involves the use of privileged information and knowledge that the official possesses as a result of his/her office to provide unfair advantage to another person or entity
- xii. ***Example:*** An official gives out privileged information to a friend regarding a contract in which the friend has an interest so that the friend can be awarded the contract.
- xiii. ***Favouritism*** - involves the provision of services or resources by the municipal official according to personal affiliations
- xiv. ***Example:*** Using ethnic, religious or political grounds to award a contract.
- xv. ***Nepotism*** - involves giving preferential consideration by a municipal official or Councillor to his/her relative ahead of more deserving persons.
- xvi. ***Example:*** Appointments of friends, relatives in posts in the Municipality.



Municipalities have identified four main corruption risk areas. Sound policies, procedures and controls will reduce these risks. These policies and procedures will, however, not be effective in the Municipality where there is not a habit of doing things transparently, fairly and for the right reasons. Thus, ethics management, also focusing on values-based interventions, is necessary to create a supportive culture where staff really understand the reasons for the policies.

### **3.4 Theft**

A person commits theft if he unlawfully and intentionally appropriates moveable, corporeal or intangible property which belongs to and is in the possession of another.

#### **3.4.1 Forms of Theft**

The following are examples of different types of theft and corrupt activities:

- a) Taking an advance for an official trip, but not going on the trip, then utilizing the advance for personal use.*
- b) Claiming for subsistence and travel expenditure to attend a course or workshop, and then not attending the course or workshop.*
- c) Personal Purchases - the purchase of supplies by officials and Councillors under the name of the Municipality for personal use.*
- d) Receiving personal benefits in exchange for assisting a consultant or service provider to gain work at the Municipality; and*
- e) Theft of Municipal Assets*

## **4 REGULATORY FRAMEWORK RELEVANT TO FRAUD AND CORRUPTION**

KwaDukuza Local Municipality seeks to comply with, but does not limit itself to, the following national and international mandates, anti-corruption instruments and similar edicts:

- a) Constitution of the Republic of South Africa Act No. 108 of 1996*
- b) Treasury Regulations Issued in terms of the Public Finance Management Act, 1999*
- c) The Local Government Municipal Structures Act No. 117 of 1998*
- d) Municipal Finance Management Act No. 56 of 2003*
- e) Municipal Systems Act No. 32 of 2000*
- f) Intergovernmental Relations Act No. 13 of 2005*
- g) Traditional Leadership and Governance Act No.5 of 2005*
- h) Promotion of Administrative Justice Act No.3 of 2000*
- i) Promotion of Access to Information Act No. 2 of 2000*
- j) Prevention of Organised Crime Act No.121 of 1998*



- k) Drugs and Drug Trafficking Act No. 140 of 1992*
- l) Protected Disclosure Act No. 26 of 2000*
- m) National Prosecuting Authority Act No.32 of 1998*
- n) Prevention and Combating of Corrupt Activities Act No.12 of 2004*
- o) Extradition Act No. 67 of 1962*
- p) Financial Intelligence Centre Act No. 38 of 2001*
- q) Criminal Procedure Act No. 51 of 1977*

### **The Constitution of the Republic of South Africa No. 108 of 1996**

The Constitution of South Africa is the supreme law of the country of South Africa. It provides the legal foundation for the existence of the republic, sets out the rights and duties of its citizens, and defines the structure of the government.

The legislative mandate of the Municipality is derived from the Constitution of the Republic of South Africa as well as other appropriate legislation.

**Section 33** of the Constitution guarantees that administrative action will be reasonable, lawful and procedurally fair, and it makes sure that people have the right to ask for written reasons when administrative action has a negative impact on them.

**Sections 151(3) and 153** of the Constitution provide that the Municipality has the right to govern, on its own initiative, the Local Government affairs of its community and to structure and manage its administration, subject to national and provincial legislation, as provided for in the Constitution.

**Section 195 (1) and 196** of the Constitution stipulates that the administration in every sphere of government is governed by the values and principles governing public administration. The Constitution requires all spheres of government to provide effective, efficient, transparent, accountable and coherent government for the Republic, to secure the well-being of the people and the progressive realisation of their constitutional rights. The Constitution of the Republic of South Africa stipulates that public administration must be accountable, ethical, impartial and fair.

**Section 217** of the Constitution of the Republic of South Africa No. 108 of 1996 provides the basis for procurement and determines that:

- a) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.*

***Treasury Regulations Issued in terms of the Public Finance Management Act and the Municipal Finance Management Act***

*In order to give effect to sections 215-219 of the Constitution, section 76(4) (c) of the MFMA and section 168(1) (a) of the MFMA it requires National Treasury to issue guidelines and instructions on various issues relating to procurement to ensure uniform minimum norms and standards within government. The supply chain regulations were promulgated in terms of section 168 of the MFMA, and require each Municipality to develop their own supply chain policy in line with the regulations. If these guidelines are ignored, Accounting Officers inevitably are liable for contravention of the legislation and expose themselves to criminal sanction.*

**Section 3.3 and 27.2.1 of Treasury Regulations** set out the roles and responsibilities of the accounting authority for the implementation of Enterprise Risk Management (ERM):

- a) The Accounting Officer must ensure that a risk assessment is conducted regularly to identify emerging risks of the institution.*
- b) A risk management strategy must include a fraud prevention plan and be used to direct internal audit efforts and priorities and to determine the skills required of managers and staff to improve controls and to manage these risks.*
- c) The strategy must be clearly communicated to all employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity.*

**Municipal Finance Management Act No. 56 of 2003**

The Municipal Finance Management Act No. 56 of 2003 (MFMA) relates to the regulation of financial management in municipalities and other entities in the Local Government sphere. It is to ensure that all revenue, expenditure, assets and liabilities of those municipalities are managed efficiently and effectively. It provides for the responsibilities of persons entrusted with financial management in those municipalities and for matters connected.

**Section 95 of the MFMA** attributes certain duties to the Accounting Officer (MM) in relation to the financial management of the Municipality. These are relevant when dealing with anti-corruption initiatives.

**Sections 61 and 62 of the MFMA** set out the responsibilities of the Accounting Officer in the Municipality, in that they must ensure that the Municipality concerned:

- a) Has and maintains effective, efficient and transparent systems of financial and risk management and internal control; and*

- b) Prevents unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct.*

**Section 32(4)** provides that the Accounting Officer must on discovery of any unauthorized, irregular or fruitless and wasteful expenditure, promptly inform the mayor, the MEC for Local Government in the province and the Auditor-General in writing.

**Section 125(1) (d)** provides that the annual report and audited financial statements must include particulars of:

- a) Any material losses through criminal conduct, and any unauthorized expenditure, irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;*
- b) Any criminal or disciplinary steps taken as a result of such losses, unauthorized expenditure, irregular expenditure and fruitless and wasteful expenditure; and*
- c) Any criminal or disciplinary steps taken as a result of such losses, unauthorized expenditure, irregular expenditure and fruitless and wasteful expenditure.*

The code of conduct (which can be found at schedule 1 to the Municipal Systems Act) prescribes how municipal Councillors, Ward Committees, and administrative officials must behave, and the penalties for improper behaviour.

### **Municipal Supply Chain Management Regulations**

The Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government, has in terms of section 168 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), made the regulations as set out in the schedule.

Section 38 provides for the combating of abuse of the supply chain management system. A supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the Accounting Officer to take all reasonable steps to prevent such abuse; to investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with the supply chain management policy, and when justified -

- a) take appropriate steps against such official or other role player;*
- b) report any alleged criminal conduct to the South African Police Service;*
- c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;*
- d) reject any bid from a bidder if any municipal rates and if any municipal rates and taxes or municipal service charges owed by that bidder or any of*

- its directors to the Municipality or municipal entity, or to any other Municipality or municipal entity, are in arrears for more than three months; or*
- e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;*
  - f) cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or an official or other role player committed any corrupt or fraudulent act during the bidding process.*
  - g) Local Government Municipal Structures Act No. 117 of 1998**
  - h) The Local Government Municipal Structures Act No. 117 of 1998 (Structures Act) provides for the establishment of a new generation of municipalities and essentially lays the foundation for a new system of Local Government in South Africa.*

Essentially, the Structures Act gives flesh to the categories of municipalities identified in the Constitution and goes on to define the different types of municipalities that can be established within each category.

The Structures Act also divides the powers and functions between the categories of municipalities and regulates matters connected with Local Government systems and structures. The Structures Act deals with the Municipal Council and provides for issues such as the election and removal from office of Councillors, and the internal proceedings in and the dissolution of the Council.

#### **Municipal Systems Act No. 32 of 2000**

The Municipal Systems Act No. 32 of 2000 (the Systems Act) defines the legal nature of the Municipality and provides for the manner in which municipal powers and functions are exercised and performed. In addition, the Systems Act provides the framework for local public administration.

Section 57A of the Systems Act prescribes that every Municipality must maintain a register of all staff members that were dismissed for financial misconduct (in terms of the MFMA), or who resigned prior to the finalization of disciplinary proceedings against them. This register must be submitted to the MEC on a quarterly basis, where after the MEC must forward the register to the Minister. No Municipality may employ a person without first checking whether or not he/she appears on the register. With regards to senior managers there is

a limitation on the employment of managers dismissed for misconduct and same needs to be complied with.

Section 106 provides that if an MEC has reason to believe that the Municipality in the province cannot or does not fulfil a statutory obligation binding on Municipality, or if maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the Municipality in the province, the MEC must:

- a) by written notice to the Municipality, request the Municipal Council or Municipal Manager to provide the MEC with information required in the notice; or
- b) if the MEC considers it necessary, designate a person or persons to investigate the matter.

### **Intergovernmental Relations Act No13 of 2005**

This Act provides a framework for the establishment of intergovernmental forums and mechanisms for the national government, provincial governments and Local Governments to facilitate the settlement of intergovernmental disputes.

Section 24 of the Intergovernmental Relations Act prescribes that there be a district intergovernmental forum to promote and facilitate intergovernmental relations between the District Municipality and the Local Municipalities in the district.

An important element of this co-operative relationship is that there needs to be a clear understanding of each sphere of government's powers and functions to ensure that a sphere of government does not encroach on the functional or institutional integrity of government in another sphere.

### **Traditional Leadership and Governance Act No.5 of 2005**

The Act provides for the recognition of traditional communities and provides for the establishment and recognition of traditional Councils, and recognition of traditional leaders, their roles and functions. It also provides a code of conduct for traditional leaders, and provides for the removal of a traditional leader from office, and the repeal of certain laws and incidental matters.

The Provincial Government, as directed by the Constitution, promotes partnerships between municipalities and the institution of traditional leadership Councils through legislative and other measures (e.g. Section 81 of the Municipal Structures Act). Such partnerships are based on mutual respect and recognition of the status and roles of the parties.

A traditional community that has been recognized must within three months establish a traditional Council. A Traditional Council is expected to:

- a) Keep proper records;
- b) Have its financial statements audited by the Auditor-General;
- c) Disclose the receipt of gifts;
- d) Hold an annual meeting with its traditional community to give account of the activities and finances of the traditional Council; and
- e) Adhere to the code of conduct.

### **Promotion of Administrative Justice Act No. 3 of 2000**

The Promotion of Administrative Justice Act (PAJA) aims to ensure that all national, provincial and Local Government/municipalities are effective and accountable to people for their actions. Together with the Constitution it embraces the Batho Pele principles and promotes South African citizens' right to just administration.

The PAJA provides the following:

- a) It ensures that administrative procedures are fair.*
- b) It gives people the right to ask for reasons.*
- c) It gives citizens the right to have administrative action reviewed by the courts.*

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

Section 32 of the Constitution enshrines the right of access to certain information, and the Promotion of Access to Information Act (PAIA) gives effect to that right. The PAIA maintains and protects South Africans' right to access any information held by the State and/or information held by another person that is required for the protection or exercise of any rights. Access to information will be granted once certain requirements have been met. The Act also recognises that the right of access to information may be limited if the limitations are reasonable in an open and democratic society.

Section 90 of the PAIA provides that:

A person who with intent to deny a right of access in terms of this Act:

- a) Destroys, damages or alters a record;*
  - b) Conceals a record; or*
  - c) Falsifies a record or makes a false record,*
- commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.*

### **Prevention of Organised Crime Act No. 121 of 1998**

The Prevention of organized Crime Act No. 121 of 1998 (POCA) relates to the provisions that are aimed at preventing and combating organised crime, money laundering and criminal gang activities.

POCA contains provisions that are aimed at achieving, inter alia, the following objectives:

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

## **5 FRAUD EXPOSURES**

Below is a summary of the high level fraud risks that were identified during the assessment, which should be managed to reduce KwaDukuza Municipality’s administration exposure to fraud and corruption.

- a) Lack of enforcement of policies creates a poor control environment that is conducive to fraudulent activity, e.g. Indigent policy, Segregation of duties.*
- b) Non-adherence to the SCM policy including:*
  - i. Misuse of section 36 or the three-quote system, to favour certain suppliers by submitting urgent requests or intentional late submission of requisitions resulting in the bypassing of controls through emergency requests*
  - ii. cover-quoting whereby fictitious quotes are submitted by the same service provider*
  - iii. deliberate splitting of purchase orders to bypass approval limits and favor a preferred service provider*
  - iv. price fixing by service providers*
  - v. tender fraud or manipulation.*
- c) Payment to service providers for services not rendered or for poor quality/substandard work.*
- d) Theft, abuse or unauthorized use of municipal assets by municipal officials e.g. Abuse or unauthorized use of municipal vehicles and theft of fuel by municipal officials.*
- e) Conflict of Interest by municipal officials and service providers where financial business interests have not been declared.*
- f) Lack of contract monitoring which results in payments being made to service providers after contracts have been terminated or expired.*



- g) Unauthorized changes/amendments made (such as banking details or supplier information) to the vendor master file by municipal officials in order to divert payments for personal gain.*
- h) Misrepresentation of experience and fabrication of qualifications by candidates during the recruiting process.*
- i) Time management:*
  - i. Abuse of working hours by municipal officials performing personal work or being absent during working hours*
  - ii. Abuse of overtime by municipal officials claiming overtime that has not been worked or inflating the amount of overtime worked*
  - iii. Abuse of leave (absenteeism) by municipal officials through not processing leave days taken.*
- j) Abuse of S&T claims by claiming for expenses that are not work-related or claiming fictitious claims.*
- k) Unauthorized or uncontrolled physical access to the municipal premises resulting in the theft or vandalism of municipal property and assets.*
- l) Ghost employees created on payroll in order to divert salaries and benefits to existing employees or third parties.*
- m) Lack of document management resulting in unauthorized access to documents, theft and destruction of documents or leaking of confidential municipal information.*
- n) The intentional destruction of or unauthorized access (hacking) into the municipal IT infrastructure.*
- o) The acceptance of bribes by municipal officials, Councillors and traffic officials.*
- p) Theft of cash or the short-banking of cash by municipal employees when receiving payment from consumers.*
- q) Duplicate payment to suppliers by submitting the same invoice for payment of services rendered.*
- r) Tampering and illegal connections of electricity and water meters by municipal officers or consumers, and service providers assisting customers with tampering in return for a kickback.*
- s) Corporate identity theft - identity used by external parties for fraudulent purposes*



## 6 GOVERNANCE STRUCTURES TO MITIGATE FRAUD AND CORRUPTION

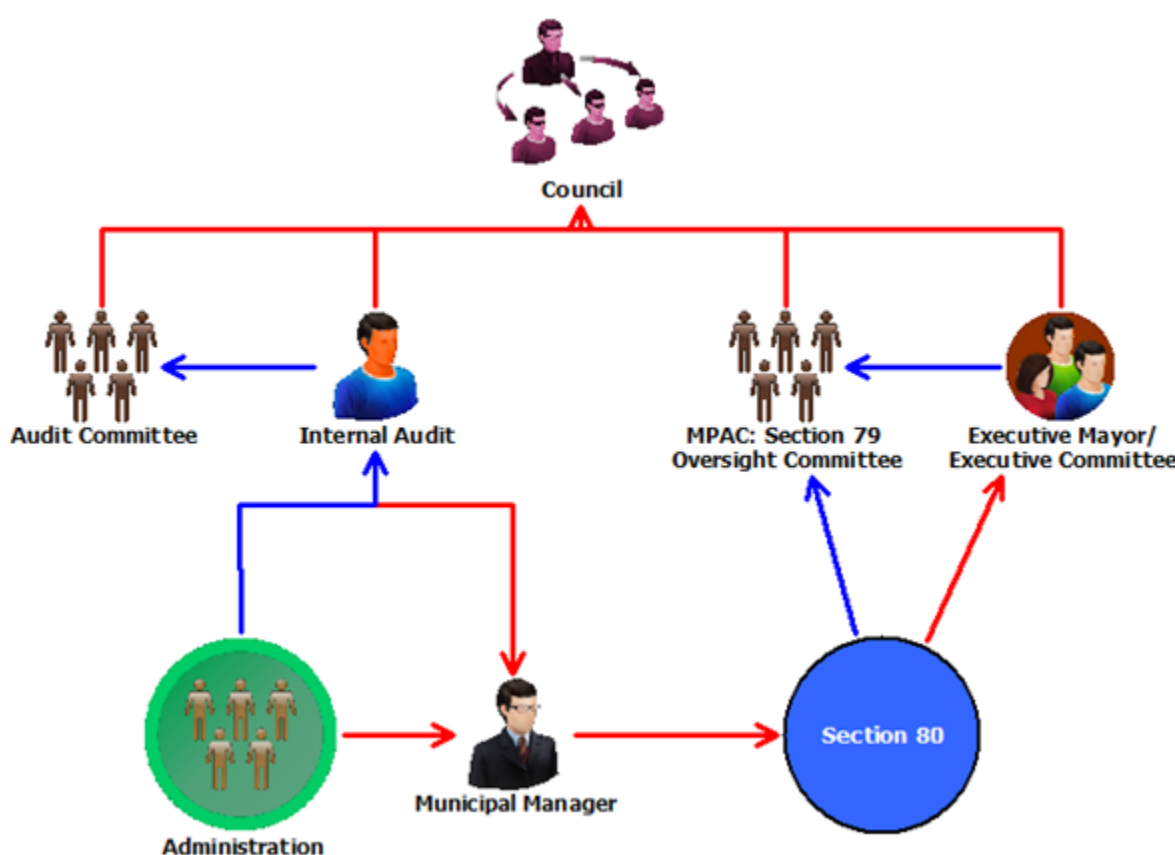
Each function within the governance structure of KwaDukuza Municipality has its individual role to play. However there needs to be co-operation and collaboration among the functions in pursuit of the common goal, i.e. fulfilling the overall objectives of KwaDukuza Municipality. The governance framework for mitigating fraud contains three layers of defense, which are set out below:

### 6.2 COMBINED ASSURANCE

Combined assurance is a coordinated approach to all assurance activities to ensure that assurance provided by:

- a) *Council and management.*
- b) *internal assurance providers (such as internal audit); and*
- c) *external assurance providers (such as external audit or sustainability assurance providers)*

Adequately addresses significant risks facing KwaDukuza Municipality and that suitable controls exist to mitigate and reduce these risks. The accountability, reporting and internal oversight framework within KwaDukuza Municipality can be set out as follows:



**RED = Accountability**

**BLUE = Reporting to**

## ***6.2 First layer of responsibility - management and councilors***

### ***6.2.1 Municipal Council***

The MEC has a responsibility to monitor the performance of municipalities.

The role of the Municipal Council is, inter alia, to -

- a) represent the local community;*
- b) ensure the well-being and interests of KwaDukuza Municipality;*
- c) ensure the provision of services to the local community;*
- d) develop and evaluate the policies and programmes of KwaDukuza Municipality;*
- e) maintain the financial integrity of KwaDukuza Municipality;*
- f) ensure that administrative policies, oversight policies, practices and procedures are in place to implement the decisions of Council; and*
- g) Ensure the accountability and transparency of the operations of KwaDukuza Municipality.*

### ***6.2.2 Councillors***

Councilors 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 KwaDukuza Municipality.

In fulfilling this role Councilors must be accountable to local communities and report back at least quarterly to constituencies on Council matters, including the performance of KwaDukuza Municipality in terms of established indicators.

A Councilor must perform his/her functions without interfering in the administration. The most important role of an individual Councilor is therefore that of being a member of the Municipal Council. As such a Councilor's role is to:

- a) direct and control the affairs of the Council in accordance with the acts applicable to Local Government;*
- b) participate in the optimum allocation of the Council's resources for the benefit of the area;*

- c) play a key role in the creation and review of the Council's policies and objectives and criteria relating to the exercise of the Council's regulatory functions;*
- d) review the performance of the Council and its delivery of services, its management plans and revenue policies.*

#### **6.2.3 Mayor**

The Mayor is not only the political leader of KwaDukuza Municipality but also the:

- a) enhancer of good governance;*
- b) builder of external and media relations;*
- c) promoter of civic and institutional pride;*
- d) supporter of and engager with the community; and*
- e) facilitator of the process of governing.*

The Mayor is accountable to the Municipal Council and must report to Council on the exercise, performance and discharge of powers, functions and duties of office.

#### **6.3.4 Speaker**

The powers and functions of the Speaker are twofold, i.e. Chairperson of the Council and enforcer of the code of conduct. The roles of the Speaker are to:

- a) preside over Municipal Council meetings so that the business can be carried out efficiently and effectively;*
- b) provide information and recommendations to the Municipal Council with respect to the role of Council;*
- c) carry out the duties of Chairperson of the Municipal Council under the Structures Act, Systems Act, and KwaDukuza Municipality's Rules of Order, common law and tradition;*
- d) enforce the code of conduct; and*
- e) exercise delegated authority.*

In terms of item 13 of the code of conduct for Councillors the Speaker must, if of the opinion that a Councillor has breached a provision of this code:

- a) authorize 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;*
- c) report the matter thereafter to a meeting of the Municipal Council; and*
- d) report the outcome of the investigation to the MEC for Local Government in the province concerned.*

### **6.3.5 *Municipal Manager as Head of the Administration***

KwaDukuza Municipality's administration is governed by the principles of section 195(1) of the Constitution. Section 6(2) of the Systems Act defines these further and instructs the administration, for example, to take measures to prevent corruption and to give members of the community full and accurate information about the level and standard of services they are entitled to receive and about the persons in charge of municipal management. The Municipal Manager must see to the implementation of these principles in his or her administration.

Section 51(i) of the Systems Act states that the Municipality must organize its administration in a manner that enables it to hold the Municipal Manager accountable for the overall performance of Municipality.

This has two consequences:

- a) The Council must have the tools to hold the Municipal Manager accountable, i.e. to demand explanation and to review his or her performance.*
- b) The Municipal Manager must have the tools to answer to that accountability, i.e. the administration must be managed in such a way that it enables the Municipal Manager to account for the performance of the entire administration.*

The Municipal Manager must manage the communication between the political structures and office-bearers and the administration (section 55(1) (j) of the Systems Act). Instructions, queries and other forms of communication from the Council, Committees, the Mayor or the Speaker to the administration cannot bypass the Municipal Manager's office, because the Municipal Manager is accountable for the entire municipal administration (section 51(i) of the Systems Act).

### **6.4 *Second layer of responsibility - oversight functions:***

The oversight function includes Anti-Corruption Committees and Sub-Committees that have oversight of risk management, namely:

#### **6.4.1 *Municipal Public Accounts Committee (MPAC)***

MPAC is established in terms of section 79 of the Municipal Structures Act and performs an oversight function on behalf of Council and is not a duplication of other committees of Council (such as the Finance Committee or Audit Committee).

The primary functions of MPAC are as follows:

- a) To consider and evaluate the content of the annual report and to make recommendations to Council when adopting an oversight report on the annual report;
- b) To assist with the conclusion of matters that may not have been finalised, such as information relating to past recommendations made on the annual report. This relates to current in-year reports, including the quarterly, mid-year and annual reports;
- c) To examine the financial statements and audit reports of the Municipality and municipal entities, and in doing so, consider improvements from previous statements and reports and evaluate the extent to which the recommendations of the Audit Committee and the Auditor-General have been implemented;
- d) To promote good governance, transparency and accountability on the use of municipal resources;
- e) To recommend or undertake any investigation in its area of responsibility, after reviewing any investigation report already undertaken by the Municipality or the Audit Committee; and
- f) To perform any other functions assigned to it through a resolution of Council within its area of responsibility.

#### **6.4.2 Other Section 79 Committees**

The role of a section 79 committee is to assist the Council in the effective performance of its functions.

**Appeals Committee:** A committee of Councillors appointed by the Municipal Council is the appeal authority to consider appeals against decisions taken by a political structure or political office-bearer, or a Councillor in terms of delegated powers.

**The Ethics Committee:** is a special committee established by the Municipal Council to assist in the discipline of Councillors. The sole purpose of the Disciplinary committee is to:

- a) investigate and make a finding on any alleged breach of the Code by a Councillor; and
- b) make appropriate recommendations to the Municipal Council to:
  - i. *issue a formal warning to the Councillor;*
  - ii. *reprimand the Councillor;*
  - iii. *request the MEC for Local Government to suspend the Councillor for a period;*
  - iv. *fine the Councillor; or*
  - v. *request the MEC to remove the Councillor from office.*

***Rules Committee:*** The terms of reference of this Committee relates to rules of procedure of Council and its Committees. The Rules Committee can also be provided with delegations from Council:

- a) to develop Rules of Order and amendments thereto, and recommend the same to Council.
- b) to summon any Councillor(s) and/or official(s) to appear before the committee to assist
  - a. the committee in the performance of its functions.

***Municipal Public Accounts Committee:*** The MPAC is established by Council to investigate any unauthorized, fruitless and wasteful expenditure incurred by any member of the administration or political office-bearer.

This committee is established especially for conducting an investigation into any unauthorized, fruitless and wasteful expenditure referred to it for investigation. The said committee may, in terms of section 32(2)(b) of the MFMA, be required to submit a report to Council indicating remedial measures to be taken to deal with said expenditure, which could include a recommendation to certify to Council that the expenditure is irrecoverable and should be written off.

#### ***6.4.3 Ward Committee***

The purpose of the Ward Committee is to assist the Ward Councillor with organizing consultation, spreading information and encouraging participation with residents within any Ward Councilor's ward. Section 72(3) of the Structures Act indicates that the objective of a Ward Committee is to enhance participatory democracy.

The following duties and powers may be delegated to Ward Committees by the Council in terms of Section 59 of the Municipal Systems Act:

- a) to serve as an official specialized participatory structure in Municipality;*
- b) to create formal unbiased communication channels as well as co-operative partnerships between the community and the Council; and*
- c) to express dissatisfaction in writing to the Council on the non-performance of a Ward Councilor.*

#### 6.4.4 *Ethics, Fraud and Risk Management Committee*

The Ethics, Fraud and Risk Management Committee should review and assess the integrity of the risk control system and ensure that the risk policy and strategy are effectively managed. The Ethics, Fraud and Risk Management Committee should further monitor the management of significant risks to KwaDukuza Municipality, including emerging and prospective impacts;

To review and improve the risk policy, strategy and implementation plans. The Committee will ensure compliance with such policies, and with the overall risk profile of KwaDukuza Municipality. The Committee shall ensure that the following risks are adequately identified and dealt with.

- a) Strategic Risks;*
- b) Human Resource Risks;*
- c) Political Risks;*
- d) Reputational Risks;*
- e) Fraud Risks;*
- f) Projects Risks;*
- g) Financial Risks;*
- h) Operational Risks;*
- i) Legal Risks;*
- j) Compliance and control Risks;*
- k) Environmental Risks;*
- l) Health and Safety Risks.*

#### 6.3.4.1 Ethics Management

Proposals are made in Public Sector Integrity Management Framework in respect of deployment of ethics officers in the public service and minimum conduct requirements. The Ethics, Fraud and Risk committee will be responsible for ensuring the success of the ethics programme at a strategic level. To achieve this they will:

- a) Commission an ethics/fraud risk and opportunity assessment;*
- b) Ensure that a good code of ethics is adopted by Council;*
- c) Strategize about, and ensure that Council adopts, an ethics/fraud management implementation plan;*
- d) Monitor the implementation of the plan; and*
- e) Evaluate the effectiveness of the programme from time to time, and bring about changes in the implementation plan or policy in line with their findings.*

The committee should be chaired by an independent external chairperson. All committee members need to be credible in terms of

integrity and honesty. The functional areas which could be represented include:

- a) The Ethics Officer*
- b) Internal audit*
- c) Forensic investigators*
- d) Human Resources*
- e) Staff development (Training)*
- f) Legal*
- g) Those responsible for risk management*
- h) Those responsible for disciplinary processes*
- i) Management from the high-risk functions.*

Once the programme is operational the Ethics, Fraud and Risk committee can also become an oversight and advisory body. They should be informed of all corruption and serious misconduct cases that are reported, and will provide guidance on complex or sensitive ethical matters when requested. Since they will continuously be confronted with sensitive information, all members of the committee will need to sign confidentiality agreements which have to be strictly enforced. The committee should also have an added function of ensuring that KwaDukuza Municipality does not retaliate against whistle-blowers.

#### **6.3.4.2 Ethics Training**

To ensure that KwaDukuza Municipality's ethical standards are integrated into all strategies and operations, and that a commitment to high ethical, moral and legal standards is sustained, municipal officials will receive ethics training.

Ethics training will be conducted at induction and on a continuing basis. The training will serve not only to highlight unethical and unacceptable business conduct and the resultant disciplinary action, but also to reiterate KwaDukuza Municipality's shared core values and the impact these values have on the employees' day-to-day operations.

Relevant aspects of the code will be included in awareness presentations, training sessions and communication programmes to create awareness thereof amongst municipal officials and other stakeholders.

The training will include an emphasis on:

- a) The importance of ethics within KwaDukuza Municipality and the consequences (for individual municipal officials, but also for KwaDukuza Municipality as a whole) of unethical conduct;*



- b) Identifying ethical dilemmas, fraudulent and corrupt behaviour and strategies for resolving ethical dilemmas;*
- c) Understanding specific policies within KwaDukuza Municipality (i.e. on gifts or conflicts of interest);*
- d) Presenting case studies which will assist in developing behavior to articulate and encourage attitudes and values which support ethical behavior;*
- e) Mechanisms for reporting illegal and unethical conduct and the measures taken to protect whistle-blowers; and*
- f) Communicating the implications of unethical behavior and its impact on individuals, the workplace, professional relationships within KwaDukuza Municipality and external stakeholders.*

#### **6.3.4.3 Ethics Communication**

*Municipalities will consider regularly communicating the ethics expectations through various channels, for instance:*

- a) By including the Code of Conduct for Councillors and Municipal staff and Conflict of Interest declarations in employee induction packs;*
- b) Regularly running awareness campaigns on fraud and ethical conduct;*
- c) Developing promotional items communicating the fraud policies or components thereof, amongst others:
 
  - i. T-shirts and Mouse pads*
  - ii. Motor Vehicle licence disks*
  - iii. Use of multi-media and social media e.g. Facebook, LinkedIn; and**
- d) Using the local paper to communicate issues relating to the prevention and detection of fraud, including matters reported and action taken.*

#### **6.5 Fraud awareness campaigns**

KwaDukuza Municipality will provide appropriate fraud prevention training in specific areas where KwaDukuza Municipality deems a high residual risk of fraud, theft or corruption exists. In this regard, municipal officials will, on an ongoing basis, receive training on the following:

- a) Fraud prevention plan and fraud response plan and the municipal officials' responsibilities to mitigate/reduce risk of fraud and misconduct;*
- b) Code of conduct;*
- c) Procedures/channels available to municipal officials to seek advice and report suspected misconduct;*
- d) Latest fraud trends;*

- e) Relevant regulatory requirements;*
- f) Manifestations of fraud and corruption in the workplace; and*
- g) How to report fraud and corruption.*

The frequency of training and communication will also be at induction, on an annual basis and as and when deemed necessary. Training will be provided through formal/informal meetings.

The following methods of communication will be considered, amongst others:

- a) E-mails/ad hoc internal fraud alerts;*
- b) Intranet postings;*
- c) Regularly running awareness campaigns on fraud and ethical conduct;*
- d) Publicizing “Lessons Learned” out of investigations into allegations of fraud and corruption amongst municipal officials;*
- e) Circulating success-related fraud modus operandi within KwaDukuza Municipality’s environment;*
- f) Printing KwaDukuza Municipality’s stance against fraud on pays lips;*
- g) Placing notices or other communiques related to fraud prevention and detection in strategic areas to which municipal officials and the public have access;*
- h) Using the local paper (available radio slots) to communicate issues relating to the prevention and detection of fraud, including matters reported and action taken; and*
- i) Developing a fraud prevention suggestion box where all municipal officials could make suggestions on how to prevent fraud and corruption.*

#### **6.6 *Fraud and ethics awareness with stakeholders***

Municipalities will also consider various means of communicating their fraud prevention initiatives, including the following:

- a) Developing a poster campaign aimed at all stakeholders to popularize KwaDukuza Municipality’s stance against fraud and also its expectations with regards to ethics and integrity of all stakeholders.*
- b) Circulating appropriate sections, the relevant code to other stakeholders i.e. consultants and contractors.*
- c) Placing communiqués in Municipal vehicles i.e. related to fraud prevention and detection in strategic areas to which municipal officials and the public have access*
- d) Giving copies of the relevant code to suppliers of goods and services*
- e) housing the local paper (available radio slots) to communicate issues relating to the prevention and detection of fraud, including matters reported and action taken.*

## **6.7 *Third layer of responsibility - independent assurance functions***

### **6.7.1 *The Auditor-General South Africa***

Municipalities are also the subject of annual external audits by the Office of the Auditor-General (AGSA) who must report on the accounts, financial statements, financial management and general governance aspects such as compliance with legislation by municipalities. It is the responsibility of the respective municipalities and municipal entities to follow up on external audit queries where high-risk areas and areas for improvement have been identified. Additionally, each Municipality and municipal entity should develop appropriate plans where external audit reports are qualified and identify material weaknesses.

The AGSA annually produces audit reports on all public entities, municipalities and public institutions. Over and above these entity-specific reports, the audit outcomes are analysed in general reports that cover MFMA cycle.

### **6.7.2 *Audit Committee***

Section 166 of the MFMA requires that the Municipality must have an Audit Committee. The Audit Committee is an independent advisory body that must advise the Municipal Council, the political office-bearers, the Accounting Officer and the management of Municipality or municipal entity on matters relating to:

- a) Internal financial control and internal audits;*
- b) Risk management;*
- c) Accounting policies;*
- d) The adequacy, reliability and accuracy of financial reporting and information;*
- e) Performance management;*
- f) Effective governance;*
- g) Compliance with the MFMA Act, the annual Division of Revenue Act and any other applicable legislation; performance evaluation; and*
- h) Any other issues referred to it by KwaDukuza Municipality internal financial control and internal audit.*

### **6.7.3 Internal Audit Unit**

The role of Internal Audit in KwaDukuza Municipality is to assist the Municipal Manager and the Council to meet their objectives and to discharge their responsibilities by providing an independent appraisal of the adequacy and effectiveness of the controls set up by management to help run the Municipality.

The auditor's function is to be satisfied that the financial statements of the Municipality fairly present the state of affairs of the undertaking in all material respects. The auditor is not and cannot be held responsible for the prevention of fraud and error. This responsibility rests with management who discharges this responsibility through the implementation and continued operation of adequate accounting and internal controls.

The controls subject to evaluation should encompass the following:

- a) The information systems environment;*
- b) The reliability and integrity of financial and operational information;*
- c) The effectiveness of operations;*
- d) Safeguarding of assets; and*
- e) Compliance with laws, regulations, Council directives and controls.*

### **6.7.4 Forensic Investigations**

The responsibility to conduct investigations relating to the actions listed in this strategy resides with Council, the Municipal Manager and the Executive Managers within the Municipality who have the advisory and supporting assistance from external state agencies which may include any of the following:

- a) Internal and external audit services;*
- b) State Attorney;*
- c) External investigating agencies, e.g. the SAPS, KZN Treasury, where matters fall within their mandate;*
- d) External consultants, e.g. Forensic Accounting consultants;*
- e) Office of the National Director of Public Prosecutions;*
- f) Special Investigating Units established under any law;*
- g) The Public Protector; and*
- h) Any other authority as may be determined by Council.*

The role of the investigations is to:

- a) Conduct and prepare reports on investigations with recommendations to management;*
- b) Report on finalized cases to enable the Municipality to effectively manage incidents and take appropriate steps to prevent recurrences*
- c) Report on finalized cases of investigations identified at the Municipality.*

Present the outcomes of the investigations to the relevant institutions with recommendations, e.g. civil recoveries, disciplinary action or referring the case to the law enforcement institutions for criminal investigation.

## **7 OVERVIEW OF ANTI-FRAUD AND ANTI-CORRUPTION RISK MANAGEMENT**

### ***7.1 Fraud and Corruption triggers***

In order for fraud and corruption to occur three factors are relevant. The fraud triangle represents the three fraud and corruption triggers commonly found in fraud events, being opportunity, motivation and rationalization's Municipality will put in place various controls (mixture of hard controls and soft controls ) to mitigate the risks arising from these three components.

**Opportunity:** refers to the perceived opportunity to perpetrate fraud against the Municipality e.g. a weak internal control environment, overriding of internal controls, insufficient supervision.

**Motivation:** refers to the perceived non-sharable need for committing the fraud, e.g. personal debt burden, performance-based compensation.

**Rationalization:** refers to the frame of mind of the fraudster to justify his/her dishonest act.

#### **Mitigating Fraud**

A comprehensive approach to mitigating fraud, theft and corruption, as explained above, includes four components, namely:

**Prevention:** preventing the occurrence of fraud i.e. creating a culture within municipalities which is intolerant to unethical conduct, fraud and corruption.

**Detection:** detecting existing instances of fraud i.e. strengthening community participation in the fight against corruption in municipalities.

**Response:** responding to the negative consequences of fraud i.e. investigating detected unethical conduct, fraud and corruption.

**Resolution:** Taking appropriate action in the event of such irregularities, e.g. disciplinary action, recovery of losses, prosecution, etc.; and applying sanctions, which include redress in respect of financial losses.

An effective strategy integrates the four components of prevention, detection, response and resolution. The graphical depiction below illustrates better practice while also taking cognisance of the perpetual cycle of prevention, detection and response and investigating fraud and corruption.

It is imperative that the implementation of anti-fraud and anti-corruption risk measures and the Anti-Fraud and Anti-Corruption Risk Plan do not function in isolation. It is the duty of KwaDukuza Municipality to ensure that when developing a comprehensive Anti-Fraud and Anti-Corruption Risk Management Plan the various control frameworks and criteria that are applicable in Local Government, such as risk assessments, code of conduct and whistle-blower mechanisms, are incorporated into the fraud prevention plan.

## **8 ANTI-FRAUD AND ANTI-CORRUPTION PREVENTION INITIATIVES**

The prevention of fraud and corruption is reliant upon the design and implementation of formal strategies and procedures that minimize opportunities for fraud (so-called "hard controls"), as well as on initiatives aimed at reducing the motivation for, and the rationalisation of fraud (so-called "soft controls"). The initiatives below represent a combination of both hard and soft controls for the prevention of fraud at KwaDukuza Municipality.

### ***8.1 Code of conduct for councilors and municipal staff***

The purpose of the code is to create public trust and confidence in public representatives and to protect the integrity of the Municipality. Schedules 1 and 2 of the Municipal Systems Act 32 of 2000 (amended) contain the two Codes of Conduct which are applicable in Local Government by law.

- a) Code of Conduct for Councillors - Applicable to municipal Councillors, directors of KwaDukuza Municipality and traditional leaders.*
- b) Code of Conduct for Municipal Staff Members - Applicable to officials working in KwaDukuza Municipality.*

#### ***8.1.1 Code of Conduct for Councilors***

The Code of Conduct for Councillors has the following compliance requirements:

- a) The Municipality has to adopt a uniform standing procedure outlining the proceedings for the imposition of a fine or the removal of a Councillor who has been absent from three or more meetings.*
- b) Councillors must disclose their interests.*

- c) A policy must be adopted which sets out the prescribed amount above which gifts must be declared. Councillors must declare such gifts.*
- d) The chairperson must authorize investigations and report findings.*
- e) Each Councillor must receive a copy of the code of conduct.*
- f) A copy must be available in every room or place where the Council meets.*

The responsibility for ensuring compliance with the code of conduct for Councillors should lie with the legislated Speaker. Furthermore, training will be given to the Councillors on the code of conduct in their new term of office.

#### ***8.1.2 Code of conduct for Municipal Staff (Appendix A)***

The Code of Conduct for Municipal Staff Members requires the following proactive activities:

- a) Staff members must disclose their interests to Council.*
- b) Staff members must report to an appropriate person if they are offered a gift, reward, or favour. They must therefore be made aware of this responsibility to report any unlawful offers and it must be clear how they should go about this.*

One clause warrants special mention: Clause 4(3) of the Code of Conduct for Councillors and Municipal Staff Members reads as follow:

*“No staff member of KwaDukuza Municipality may be a party to or beneficiary under a contract for the provision of goods or services to KwaDukuza Municipality or any municipal entity established by KwaDukuza Municipality.”*

#### ***8.2 “I DO RIGHT - EVEN WHEN NOBODY IS WATCHING” concept***

The Province of KwaZulu-Natal has adopted a policy of zero tolerance towards corruption. In this regard, the province has adopted the ethos of “I Do Right - Even When Nobody is Watching” as a proactive initiative or campaign to enhance professional and ethical behaviour among municipal officials in their dealings with civil society, including business, labour and the media.

**Strategic Objectives of the Campaign are to:**

- a) Systematically and continuously sensitise municipal officials on the need to uphold good ethical and professional standards in their work.*
- b) Assure service providers that they may do business with Government without having to bribe an official.*



- c) Enlist the support and co-operation of labour, business and civil society in reporting incidents of suspected corrupt practices wherever and whenever they come across these.*

### **8.3 *Public Sector Integrity Management framework***

The purpose for the Public Sector Integrity Management Framework is to strengthen measures and standards for managing integrity and also promote ethical conduct in the public service. This Framework provides for managing unethical conduct that can arise as a result of financial interests, gifts, hospitality and other benefits, post-public service employment and remunerative work outside the public service.

The Framework is introduced to provide a comprehensive Integrity Framework derived from the existing regulatory framework in order to align all measures regulating ethics and integrity in the public sector, with the following objectives:

- a) Strengthening existing measures regulating probity in the public service;*
- b) Strengthening capacity to prevent corruption;*
- c) Monitoring and evaluation to ensure compliance; and*
- d) Enforcement as a deterrent.*

KwaDukuza Local Municipality shall develop and implement awareness programmes to educate officials on ethics, good governance and anti-corruption measures and requirements contained in the PSIMF with regards to financial interests, gifts, hospitality and other benefits, post-public employment and remunerative work outside the public service.

### **8.4 *Ethics infrastructure***

Many municipalities have identified innovative and cost-effective methods to improve overall implementation of their ethics regulations. Best practice, lessons learnt, resources and services can be shared between municipalities for mutual assistance.

The Department of Public Service and Administration (DPSA) will also conduct communication and awareness workshops to explain all measures contained in the Framework made in PSIMF in respect of deployment of ethics officers in the public service and assist municipalities with implementation through developing implementation guidelines.



### **8.5 *Fraud and Ethics awareness with stakeholder***

Municipalities will also consider various means of communicating their fraud prevention initiatives, including the following:

- a) Developing a poster campaign aimed at all stakeholders to popularise KwaDukuza Municipality's stance against fraud and also its expectations with regards to ethics and integrity of all stakeholders;*
- b) Circulating appropriate sections the relevant code to other stakeholders i.e. consultants and contractors;*
- c) Placing communiques in Municipal vehicles i.e. related to fraud prevention and detection in strategic areas to which municipal officials and the public have access*
- d) Giving copies of the relevant code to suppliers of goods and services*
- e) Using the local paper (available radio slots) to communicate issues relating to the prevention and detection of fraud, including matters reported and action taken.*

### **8.6 *Fraud Risk assessments***

KwaDukuza Municipality acknowledges the fact that it faces diverse business risks from both internal and external environments. At the Fraud Risk Assessment workshop, the potential risks are assessed and prioritised. After identifying the major risks, the team designs methods of preventing fraud in these areas. Risk owners are identified and the results of the fraud risk assessment are documented in a Fraud Risk Register, which is maintained by internal audit and forms part of its reporting to the Audit Committee and other senior executives.

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 of action plans.

The above will be formulated into a Fraud Risk Register, which will prioritise the fraud and corruption risks and indicate actions to mitigate these risks.

Annually, management presents these revised risks with mitigating techniques to the Audit Committee for consideration. The risks that are both inadequately managed and carry material risk in the current environment are addressed, as new systems are required. The assessments will be completed annually and internal audit needs to assess the effectiveness of the controls.

### **8.7 *Remunerative work outside public service***

When outside business directorships are being considered, prior written approval must be obtained from the Line Manager responsible for the division.

In considering an application for outside remunerative work, the Line Manager or designated official shall, in addition to the current criteria, assess whether the outside work could reasonably interfere with or impede the effective and efficient performance of the employee's functions.

The Municipal Manager shall take into account the following aspects when assessing the application:

- a) The nature and extent of work to be undertaken*
- b) The time required for the outside work*
- c) The employee's performance record.*

The current period for considering an application for outside remunerative work shall be extended from 30 to 60 days in order to give the Municipal Manager enough time to assess the implications of applications for outside work.

### **8.8 *Recruitment procedures***

Recruitment will be conducted in accordance with the requisite recruitment procedure. It will be a transparent process and all appointments will be confirmed only after due recommendation. 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. Should it be subsequently identified that a person involved in the decision-making elements of the recruitment process has a relationship with the potential employee and has not declared the potential conflict, that person may be subject to disciplinary procedures. Members serving on the Selection and Short-listing committee shall be bound by the confidentiality clause.

In that regard municipalities should have human resources systems, policies and procedures which incorporate the promotion of integrity, anti-fraud and anti-corruption practices as detailed below:

#### **8.8.1 *Pre-employment Screening***

The screening process needs to be conducted for candidates that are recommended for appointment. It is good practice to specify in job adverts that screening will be done as this is already a deterrent to fraudsters.

Pre-employment screening will be carried out in accordance with KwaDukuza Municipality's recruitment policy, and evidence of such screening will be maintained by the HR Department. All applications should be submitted on a fully completed application form with copies of qualifications and certificates attached.

Screening will be conducted on **all candidates recommended for the appointment** and in accordance with the classification of the employee or the levels of screening outlined below:

**The following are the recommended checks that may be performed:**

Contract Municipal Official / Interns	Contract municipal officials	<p><b>Verifying qualifications.</b> Telephonic enquiry with the tertiary education institution directly or work through the South African Qualifications Authority (SAQA). With smaller institutions, also verify that the training institution is accredited for the qualifications that you are checking. This can also be done through SAQA.</p> <p><b>Verifying ID, citizenship and criminal record.</b> Verify authenticity of ID and citizenship through taking of fingerprints.</p> <p>Previous employment verification</p> <p>Criminal records check. This must be done through SAPS and requires the written consent of the applicant.</p> <p>Permanent residence permits.</p>
Clerical and Officers	Non-management municipal officials (who are not joining sensitive functions)	<p>Education check including foreign qualification verification checks</p> <p>Citizen verification check and permanent residence permits</p> <p>Previous employment verification</p> <p>Criminal records check.</p>
Senior managers	Management (including Board Members, Senior Management) municipal officials and municipal officials who are joining sensitive functions (e.g. SCM)	<p>Education check including foreign qualification verification checks</p> <p>Citizen verification check and permanent residence permits</p> <p>Security vetting where prospective employees in senior or high-risk positions are formally assessed for security risks by the National Intelligence Agency or Military</p>

**The following are the recommended checks that may be performed:**

		<p>Intelligence. Because the honesty and integrity of individual employees determines the integrity of KwaDukuza District Municipality, security vetting is often crucial. This is especially so for anyone involved in implementing sensitive areas of the anti-corruption strategy (such as investigations).</p> <p>Previous employment verification, and to determine circumstances under which they left.</p> <p>Contact referees</p> <p>Criminal records check</p> <p>Credit Check</p> <p>Psychometric tests</p> <p>Directorship and membership searches.</p>
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Positions that have been identified as high-risk areas will need stricter vetting procedures. It is also good practice to link risk profiles to job descriptions to alert the selection committee to the importance of finding a person with high levels of integrity.

Vetting and screening are some of the simplest and most effective practices to incorporate into municipalities. By consistently applying these practices municipalities will prevent many corruption and labour issues and also contribute to high standards of professional ethics in municipalities.

#### **8.8.2 *Checking of Register of Dismissed Officials Prior to Recruiting***

Section 57A of the Municipal Systems Act prescribes that the Municipality must maintain a register of all staff members that were dismissed for financial misconduct, or who resigned prior to the finalisation of disciplinary proceedings against them. This register must be submitted to the MEC on a quarterly basis, where after the MEC must forward the register to the Minister. The Municipality may not employ a person without first checking whether or not he/she appears on the register.

Induction training offers an opportunity to establish clear foundations and expectations in terms of ethics, integrity, fraud awareness, fraud prevention and other concepts that are the foundation of all accountable municipalities. All new municipal officials have to go through the induction programme. The Municipality will ensure that the municipal strategy, business ethics and fraud awareness training is incorporated.

This training is done systematically and is generally the responsibility of the Corporate Services/HR manager to ensure that the new municipal officials undergo induction training in the first three months of commencing work.

Contractors and temporary municipal officials must also be considered for the induction training.

#### **8.8.3 *Obligatory Leave Periods***

In order to reduce the risk of over-worked municipal officials who could become careless, leading to non-compliance with internal controls, and to reduce the risk of fraud, municipal officials are allowed to take a minimum of 22 days of annual leave. This should include an annual compulsory period of 10 consecutive leave days.

Managers will be encouraged to ensure that appropriate controls, e.g. appropriate scrutiny and supervision are put in place in instances where, for extended periods of time, municipal officials do not take leave due to work commitments.

#### **8.8.4 *Probation***

Compulsory probationary periods should be applicable to all full-time municipal officials. Relevant vetting will be considered for municipal officials on probation, during probation and prior to their final appointment, in view of the long duration of the probationary period.

#### **8.8.5 *Exit Procedure and Return of Assets***

The exit procedure at the Local Government requires the employee to return all assets and to complete the exit clearance form as well as the attendance of an exit interview. This includes securing all electronic information of the employee.

In addition to this, all municipal officials will be required to complete an employee “exit interview questionnaire” upon resignation from KwaDukuza Municipality. Any suspected fraud, corruption or misconduct identified through this process will be communicated to senior management for investigation. This is necessary to ensure that factors contributing to misconduct and fraudulent activity by the municipal officials can be managed as a process to mitigate fraud risk.

#### **8.8.6 *Post-Public Service Employment***

The public service does not have measures in place to regulate post-employment activities of former municipal officials. It is recognised that municipal officials may abuse their position to benefit themselves, other individuals or companies in exchange for favors, such as employment opportunities, after they have left the public service.

The public service is introducing this control regime which aims to ensure that senior public officials shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office, and to minimise the possibilities of:

Allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office;

Obtaining preferential treatment or privileged access to the government after leaving public office;

Taking personal advantage of information obtained in the course of official duties before it becomes generally available to the public; and

Using public office to unfair advantage in obtaining opportunities for outside employment.

In order to prevent any conflict of interest and unethical conduct that may arise as a result of post-public employment, the following proposals are made to restrict post-employment activities of senior employees in the public service:

Senior municipal officials who are about to resign from the public service shall disclose in a confidential form all confirmed offers of employment to the Municipal Managers; and

The Executive Authority shall scrutinise the disclosure to ensure that there is no conflict of interest between the official's functions in the public service during the period of one year prior to the termination of their service and the new functions outside the public service.

Should there be any conflict of interest, the senior official shall not, within twelve months after leaving the public office accept appointment to a board of directors of, or employment with, entities with which they personally had significant official dealings during the period of one year immediately prior to the termination of their services. The Council shall retain the authority to reduce or waive this limitation period (cooling-off period) of employment depending of the circumstances of each case.

Private entities that have any existing business contracts or stand to acquire business contracts with KwaDukuza Municipality are prohibited from recruiting senior municipal officials that represent KwaDukuza Municipality in those business contracts or are doing the same or related work to what KwaDukuza Municipality is rendering in the public service. Service Level Agreements (SLAs) must include a clause restricting the recruitment of public senior servants by private entities and informing them of blacklisting of such companies. The employment contract of senior managers must be amended to include a clause that informs them of these provisions.

#### **8.8.7 *Remunerative Work outside the Public Service***

When outside business directorships are being considered, prior written approval must be obtained from the Line Manager responsible for the division.

In considering an application for outside remunerative work, the Line Manager or designated official shall, in addition to the current criteria, assess whether the outside work could reasonably interfere with or impede the effective and efficient performance of the employee's functions.

The Municipal Manager shall take into account the following aspects when assessing the application:

- a) The nature and extent of work to be undertaken*
- b) The time required for the outside work*
- c) The employee's performance record.*

The current period for considering an application for outside remunerative work shall be extended from 30 to 60 days in order to give the Municipal Manager enough time to assess the implications of applications for outside work.

#### **8.8.8 *Prohibition of Corrupt Individuals from Public Service***

Municipal officials and businesses that have been party to acts of corruption often change employer within the public sector or, in the case of businesses, change name or the segment/location in which they operated. To remedy this situation and to raise the integrity and ethics of the public service and the businesses it does business with, prohibition must be established by:

Excluding an employee and owners and directors of businesses found criminally guilty of corruption from employment or contract with the public



sector for a maximum period of 5 years. The presiding officer has discretion as to the period of the prohibition;

Recording the prohibition of such persons on employment systems;

Publication of sanctions and names of businesses, owners and directors;

Requiring institutions to consult the centralised electronic register before contracts are concluded; and

Requiring contractors to declare previous criminal convictions related to corrupt practices.

KwaDukuza Municipality will name and shame municipal officials involved in fraud and corruption.

### 8.9 *Vendor Due Diligence Procedures*

The following due diligence procedure must be considered. All suppliers need to be registered on the database. This is when the due diligence should be initiated prior to the appointment of the service providers, and is meant to be ongoing.

#### The following procedures may be performed:

Level 1	One time vendors, low volume/value vendors (excluding sensitive vendors)	Desktop-based search for online presence, negative media publicity Desktop-based search for litigation check National Treasury Blacklist database check.
Level 2	Medium volume/value vendors (excluding sensitive vendors)	Desktop-based search for online presence, negative media publicity Desktop-based search for litigation check National Treasury Blacklist database check Site visits.
Level 3	High volume/value vendors including sensitive vendors	Desktop-based search for online presence, negative media publicity Desktop-based search for litigation check National Treasury Blacklist database check Site visits Ultimate Ownership check.

Declarations are also requested from the vendor regarding:

Any potential conflict of interest due to the expected relationship; whether there exists any relationship between the vendor/vendors and municipal officials

Relationships between the vendor/vendors, municipal officials/vendors, owners and other vendors of KwaDukuza Municipality.

On an annual basis, declarations are requested to be resubmitted by the vendors.

All such declarations may be reviewed to identify potential risks to municipalities.

#### **8.10 *Conflict of interest***

A conflict of interest exists when employees have a direct or indirect personal interest that could interfere—or be perceived by others to interfere—with their objectivity in the performance of their municipal duties. It includes using an employee’s position, confidential information, work time, or government materials or facilities for private gain or advancement. A conflict may occur when an interest benefits any member of the employee’s family, friends, or business associates.

Municipal officials are required to support and advance the interests of KwaDukuza Municipality, which is in direct service of the public. Councillors and staff should therefore avoid placing themselves in situations where their personal interests conflict or potentially conflict with the interests of KwaDukuza Municipality or the broader interest of the public. All municipal officials (and their immediate families) are prohibited from being directly or indirectly associated with any business entity that provides goods and services to the KZN Local Government. In addition, all municipal officials are required to disclose their business interests annually and this should be updated routinely as and when the individual’s circumstances change.

##### **8.10.1 *Types of Conflicts of Interest:***

The following constitute conflicts of interest and should be avoided and/or declared by elected officials and municipal staff:

- a) Part-time employment in areas similar to those in which KwaDukuza Municipality is involved;*
- b) External work for suppliers, vendors, or other organizations hired by KwaDukuza Municipality or that derives benefit from KwaDukuza Municipality;*
- c) A financial interest, such as a shareholding or a commission position, in a business that is a supplier to KwaDukuza Municipality;*
- d) Exclusive or preferential discounts from an employee or representative of a supplier, person under investigation, or member of the public, including the purchase of shares from a supplier on a preferential basis.*
- e) Dealing directly with or through a spouse or family member who is a supplier or vendor, or is employed by one.*
- f) Nepotism or favoritism in hiring; appointment of family members to a position within one’s influence;*

- g) Soliciting loans from a citizen, a person under investigation, or a supplier, that is not generally in the business of granting loans to the public;*
- h) Giving work time and Municipal assets to external interests, including political campaigns, business issues, and personal matters; and*
- i) Participation in any activity that might lead to the disclosure of proprietary information of KwaDukuza Municipality or of citizens who have entrusted this information to KwaDukuza Municipality.*

#### **8.10.2      *Disclosure of Financial Interest and Assets (Appendix B)***

Municipalities should take steps to improve compliance levels through, inter alia:

- a) Annual submissions: Councils can support the legislative amendment to the Municipal Systems Act, 2000, to stipulate annual declarations for Councillors, irrespective of changes to their personal interests;*
- b) Electronic submissions: an online submission facility that requires mandatory submissions for Councillors can assist municipalities to achieve high levels of compliance;*
- c) Improving communication: Councillors and staff should remain informed of submission deadlines and processes to prevent non-compliance. Senior Council members, including Speakers, can support compliance by submitting and encouraging Councillors to meet their public duties; and*
- d) Enforcing penalties for late submissions and non-compliance: sanctions and penalties provide an incentive for Councillors to submit on time, especially if they include financial penalties (fine or a percentage of income deducted) or the loss of benefits.*

#### **8.10.3      *Compliance with the Conflict of Interest and Financial Disclosure Framework (Appendix C)***

The declaration of interest form should accurately reflect companies, close corporations, partnerships or associations of which municipal officials may be a director or in which municipal officials may have a financial interest. Human Resources will be required to perform checks on all disclosures declared and maintain the consolidated register.

Failure to disclose potential conflicts of interest will be dealt with in terms of the Disciplinary Code and Procedures for the Public Service and/or prosecuted criminally as the case may be.

Municipalities need to ensure compliance in respect of the submission of financial disclosure forms to the PSC by 31 May of each

year. This will provide for an effective partnership in helping to manage potential conflicts of interest early and effectively.

#### **8.11 *GIFTS, HOSPITALITY AND FAVOURS***

It is a common perception that officials employed in municipalities face the greatest challenge to their integrity in the form of enticement to accept bribes from unethical suppliers, contractors and consultants. Furthermore, these trading partners are also often viewed as untrustworthy in service delivery.

Municipal officials must as a general rule not accept gifts, where the gift has been given because of the giver's official relationship with the administration itself.

Municipal Councillors and staff should recognize that accepting a gift, entertainment, hospitality, or a gratuity from suppliers or other parties may infringe on their responsibility to provide objective, impartial decision-making. A clarification of these terms may help discourage abuse:

- a) Gifts are items and services of value, which are given by outside parties, e.g. money, computers, cars etc. Any of the following can also be considered gifts:
  - i. Entertainment is provided for the purpose of relaxation and recreation provided by outside parties, e.g. tickets to sporting events, holidays etc.
  - ii. Hospitality is provided to look after a human need or to display respect to a person or a group, e.g. extravagant meals, accommodation etc.
- b) Gratuities are rewards or incentives provided in exchange for or in recognition of the completion or delivery of work, a product, or an achievement. This includes any of the above seemingly given as a thank-you.
- c) Kickbacks include anything of value provided directly or indirectly for the purpose of improperly obtaining or rewarding favourable treatment. In the wrong circumstances any of the above can be construed as a kickback.
- d) Donations are charitable contributions to a cause.

A staff member must without delay report to a senior official or to the Speaker of the Council any offer which, if accepted by the staff member, would constitute a breach of the policy.

#### 8.11.1 *Gifts Policy Provisions*

The Municipal Manager/ Accounting Officer is obliged to promote high ethical standards and ensure that matters raised in this policy are handled in such a manner that the objectiveness of employees is never questioned and that all actions can be accounted for in public.

An individual employee/Councillor should under no circumstances accept a gift, donation or sponsorship where he/she could be compromised, or bound in his/her work or his/her judgement could be influenced. The acceptance/giving of gifts, donations or sponsorships must be recorded in a gifts, donations and sponsorship register to be kept by each Directorate in attached format as “Annexure C”, and be submitted to Enterprise Risk Management (ERM) unit on a monthly basis for monitoring.

An employee must accept the responsibility to ensure that such a gift, donation or sponsorship is not presented with an ulterior motive to influence him/her in an improper manner.

Gift, donations or sponsorships offered on official occasions may be accepted without prior approval, such gift, donations or sponsorships must be noted in the appropriate register kept by the Directorate.

With regard to Directors, the Secretary of the Accounting Officer must keep the register. The Accounting Officer / Municipal Manager must declare all gifts, donations and sponsorships to the Executive Committee in writing. All registers and the written declarations of the Accounting Officer / Municipal Manager must be accessible for audit purposes.

Invitations to lunch, dinner, or sports events and or once-off social or cultural events can be approved by the immediate manager, such invitations must be noted in the gifts, donations and sponsorship register.

The Accounting Officer / Municipal Manager will only consider any gifts, donations and sponsorships or invitations beyond those mentioned above on the grounds of a prior written request and such request must be submitted timeously and supported by comprehensive motivation.

A prior written approval request be submitted to Accounting Officer for Donations amongst family members and employees. For donations amongst Councillors a prior written approval request be submitted to Accounting Officer and the Council.

The acceptance/giving of the following gifts will only be considered for approval upon the submission of a fully motivated written request:

- a) a gift as a measure of thanks for good relationship and co-operation;*
- b) journeys offered by private institutions with the aim of introducing their product(s);*
- c) any sponsorship or donation by any company, consultants business, etc.; and*
- d) any request in respect of which doubts or uncertainty exist.*

Before a request for the acceptance/giving of a gift, donation or sponsorship is submitted, the following guidelines must be borne in mind:

- a) the time of the year (Christmas and other festivals). The question has to be asked whether the gift, donation or sponsorship is offered on the eve of an important decision that has to be taken by the person who the gift, donation or sponsorship is offered to; and*
- b) the nature and the value of the gift, donation or sponsorship.*

Acceptance of gifts, donations and sponsorships to the employee:

- c) The Accounting Officer / Municipal Manager may approve the acceptance / giving of any gift, donation or sponsorship to the employee where such gifts, donations or sponsorship are in cash or any kind; and*
- d) All gifts, donations or sponsorships received during the course of the financial year must be disclosed as a note to the Annual Financial Statements of the Municipality.*

#### **8.11.2      *Conditions for giving or accepting gifts***

Gifts may only be given or accepted by an employee / Councillor whilst acting in his or her capacity as an employee / Councillor of KwaDukuza Municipality to suppliers, clients or third parties, under the following conditions:

- a) the employee must disclose the giving and receiving of gift involving a monetary value of R 350.00 and gifts with retail value of less than R 350.00 may only be accepted and retained or given where they can be considered occasional gifts and acceptance and retention thereof would not give rise to public concern;*
- b) gifts over R 350.00 should be refused and should not be given;*
- c) giving and accepting gifts, donations and sponsorship regardless of value must be recorded on the Gift Register of the Municipality;*

- d) employees / Councillors can only accept/give gifts, donations and sponsorship up to three times in a financial year, however these should not be from the same supplier.

#### **8.11.3      *Recording of Gifts, Awards, Rewards, Hospitality and Favors (Appendix D)***

All offers above must be presented to the manager of the employee's respective Line Manager and if approved and accepted, be recorded in the register. KwaDukuza Municipality shall maintain a "Gift and Hospitality" register for recording all offers of gifts and hospitality to and from municipal officials of KwaDukuza Municipality that are under their control.

The acceptance of gifts, rewards, awards, sponsorships, donations and hospitality by municipal officials, in contravention of the provisions of this policy, is considered serious misconduct and must be dealt with in terms of the Disciplinary Code and Procedures for the Public Service, and/or prosecuted criminally.

### **9    ANTI-FRAUD AND ANTI-CORRUPTION DETECTION INITIATIVES**

KwaDukuza Municipality aims to effectively and swiftly detect instances of fraud, thereby ensuring prompt action and minimizing possible losses.

Detection of fraud and corruption may occur through:

- a) Vigilance on the part of municipal officials, including line management*
- b) The internal audit function*
- c) The application of forensic data analysis techniques*
- d) Instituting and implementing an effective and conducive control environment*
- e) Whistleblowing reports.*

#### **9.1    *Vigilance on the part of municipal officials, including line management***

The Council expects all people and organizations that are in any way associated with KwaDukuza Municipality to conduct their activities in an honest and fair manner and to lead by example.

In so doing, all employees within KwaDukuza Municipality are encouraged to be aware of and to identify any internal control weaknesses within the working environment and to communicate such weaknesses to their manager, or in the case of manager, to the Head of Business Unit or alternatively to risk management within the internal audit.



Furthermore, municipalities will continue to regularly re-emphasize to all managers that consistent compliance by employees with internal controls is in itself one of the fundamental controls in place to prevent fraud. Managers will be encouraged to recognize that internal control shortcomings identified during the course of audits are, in many instances, purely symptoms, and that they should strive to identify and address the causes of these internal control weaknesses, in addition to addressing the control weaknesses.

Where employees or managers do not comply with basic internal controls, firm disciplinary action will be considered.

## **9.2 *Internal Audit function***

A robust internal audit programme, which focuses on the prevalent high fraud and corruption risks, should be introduced to serve as an effective preventative measure in terms of detecting control deficiencies prior to a fraud event occurring.

The internal audit programme will cover the following:

Surprise Fraud Audits: Unplanned fraud will be conducted on specific business processes throughout the year. Internal Audit will consider the following in determining which business units/processes to audit:

Key risk areas as identified via fraud risk assessments:

- a) Recent risk exposures*
- b) Recent forensic investigations*
- c) Long outstanding management actions.*

Post-fraud reviews: A review of fraudulent transactions after they have been processed and completed can be effective in identifying other similar fraudulent or corrupt activity.

In addition to the possibility of detecting further 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.

The internal audit department will be responsible for implementing an internal audit programme which will incorporate steps to ensure adherence to internal controls to mitigate fraud and corruption.

### **9.3 *Forensic data analysis***

Fraud will be addressed by conducting reviews in order to secure a more detailed understanding of the areas wherein these risks exist. The following are examples of a selection of tests on data that may assist in identifying irregularities:

- a) Employees with false ID numbers*
- b) Employees that are linked to companies or CC's*
- c) Employees linked to suppliers of KwaDukuza Municipality*
- d) Suppliers with shared information, similar names or false VAT numbers*
- e) Payments made over weekends or on public holidays*
- f) Invoices in number sequence, duplicate invoices or payments*
- g) User trends (spikes in usage)*
- h) Splitting of orders (3 invoices to stay under thresholds)*
- i) Round amount payments and contracts or payments close to threshold and or delegations.*

Furthermore, specific transactions will be selected in order to conduct fraud detection reviews, including fraud susceptibility assessments, aimed at detecting possible incidents of fraud and/or control weaknesses in order to address these:

- a) Weaknesses in internal controls*
- b) Weaknesses in the payroll system*
- c) Weaknesses in information technology and processing systems*
- d) Weaknesses in Human Resources Management development policies*
- e) Weaknesses in budget management and reviews and financial reporting*
- f) Collusion in tendering and procurement*
- g) Fraud relating to fleet management (e.g. abuse of vehicles and petrol cards)*
- h) Abuse of assets, including computer equipment*
- i) Poor inventory and asset management.*

### **9.4 *Control Environment***

The control environment is imperative to the effectiveness of fraud detection and includes:

- a) Basic controls within the recording function that check that transactions recorded and processed have been authorised and that they are completely and correctly recorded and accurately processed*
- b) Reviewing the arithmetical accuracy of the records, the maintenance and reconciliation of totals, budgetary control and accounting for documents*
- c) The physical security records, information and controls designed to limit access by unauthorised persons*

- d) Supervision by managers of day-to-day transactions and the recording thereof.*

### **9.5 Whistle-blowing facility**

KwaDukuza Municipality recognizes that in order to effectively prevent fraud, all fraudulent activities detected by municipal officials and other stakeholders should be reported and investigated. The Local Administration supports the National Anti-Corruption Hotline of the Public Service Commission and encourages its municipal officials to utilize this service to supply information relating to fraudulent activity. The Fraud Hotline is also an integral mechanism for the reporting of fraud in terms of the fraud policy. In this regard, the **WHISTLE BLOWERS ANTI-FRAUD AND CORRUPTION LINE: 0800 204 205** is in place and intended to achieve the following:

- a) To deter potential fraudsters by making all municipal officials and other stakeholders aware that government is not a “soft target”, as well as encouraging their participation in supporting, and making use of this facility*
- b) To raise the level of awareness that government is serious about fraud*
- c) To detect incidents of fraud by encouraging whistle-blowers to report incidents that they witness*
- d) To assist the province and hence government in managing the requirements of the Protected Disclosures Act by creating a channel through which whistle-blowers can report irregularities which they witness or which come to their attention anonymously if they prefer*
- e) To further assist government in identifying areas of risk of fraud in order that preventative and detective controls can be appropriately improved or developed.*

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

#### **9.5.1 Reporting Channels**

A large part of creating an ethical culture in KwaDukuza Municipality is creating vigilance among Councillors, staff members and the community for unethical conduct. Unfortunately though, many people never report misconduct that they see. Studies show various reasons for this, including:

- a) They did not believe the institution would do anything about it.*
- b) Fear of retaliation from management.*
- c) Linked to this fear of retaliation, the lack of an anonymous and confidential means of reporting.*

The following needs to be considered:

- a) The Protected Disclosures Act and safe reporting mechanisms*
- b) Whistleblowing / protected disclosure policies.*

Other channels for reporting fraudulent activity:

- a) It is the responsibility of every employee of KwaDukuza Municipality to report incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to his/her manager. If the employee is not comfortable reporting such matters to his/her immediate supervisor or manager, he/she should report the matter to any other member of management, the Municipal Manager and/or the Chairperson of the Audit Committee.*
- b) Should an employee wish to make a report anonymously, such a report may be made to any member of management, the Municipal Manager, the Chairperson of the Audit Committee and/or the Speaker or the Mayor.*
- c) It is the responsibility of any recipient of a complaint to promptly report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the Municipal Manager.*
- d) Where an employee is alleged to have committed an act of fraud, corruption, theft, or maladministration the Municipal Manager must institute disciplinary proceedings in terms of the applicable disciplinary procedure of KwaDukuza Municipality.*
- e) Where a Councillor is alleged to have committed an act of corruption or fraud, the Speaker or Council must institute an investigation in terms of section 13 and 14 respectively, of the Code of Conduct for Councillors as contained in the Municipal Systems Act.*

Municipalities which do not have whistle blowing policies in place should adapt the one as provided by the local Treasury for their unique circumstances

## **10 ANTI-FRAUD AND ANTI-CORRUPTION RESPONSE STRATEGIES**

### ***10.1 Reporting fraud and corruption***

Allegations of fraud, corruption, maladministration, theft, mismanagement of funds and KwaDukuza Municipality anti-corruption hotline

- a) Whistle-blowers*
- b) Executing authorities*
- c) Senior management of government institutions*
- d) Normal assurance reviews*

KwaDukuza Municipality encourages all municipal officials to report any incidents of fraud and corruption through the **WHISTLE BLOWERS ANTI-FRAUD AND CORRUPTION LINE: 0800 111 209** whereby municipal officials can report fraud without fear of reprisal or victimisation by fellow municipal officials.

### ***10.2 Investigating fraud and corruption allegations***

In terms of section 106 of the Local Government Municipal Systems Act, Act No. 32 of 2000, the respective MECs for municipalities are responsible for investigation of corruption cases in respect of municipalities in the provinces. According to section 6 of the same Act the municipal administration also has a responsibility to 'facilitate a culture of public service and accountability amongst staff' and 'take measures to prevent corruption'. They cannot do this without at least some capacity to investigate reports of misconduct made to them.

In the event that fraud or corruption is detected or suspected, municipalities, depending on the nature of the concern, will initiate investigations. Municipalities will consider the following to respond to the fraud or corruption:

- a) Forensic investigation*
- b) Internal disciplinary enquiry*
- c) Criminal prosecution*
- d) Civil recovery of losses.*

### ***10.3 Investigations***

All investigations performed and evidence obtained will be in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations are paramount.

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

#### ***10.3.1 Co-operation with other Anti-Corruption Agencies***

Municipalities should consider centralising investigations in order to centralise statistics and information through the Case Management system which will assist with:

- a) The registration and monitoring (including tracking) of cases under investigation;*

- b) Improving accurate reporting on cases of fraud and corruption; and*
- c) Enable tracking of the implementation of recommendations, disciplinary actions, civil recoveries, and criminal cases registered with law enforcement agencies.*

Municipalities who do not have databases on corruption cases should develop these as it can only enhance their respective capacities to respond to fraud and corruption in a coherent and systematic manner. Such a database should also be developed for Municipalities as a whole.

#### **10.4 *Disciplinary enquiry***

In instituting an internal disciplinary enquiry against a municipal official, KwaDukuza Municipality must ensure that all disciplinary proceedings take place in accordance with the procedures as set out in the organization's Human Resources Policy and Manual on disciplinary code.

The ultimate outcome of disciplinary proceedings may involve a person/s receiving written warnings or having their services terminated.

The Municipal System Act also contains the disciplinary procedures and various Codes of Conduct for the different categories of role-players on municipal level. KwaDukuza Municipality must:

- a) Insist on disciplinary proceedings against corrupt officials;*
- b) Make public statements against corruption and corrupt officials in press statements, newsletters, circulars, etc.*
- c) Lay criminal charges against internal and external perpetrators;*
- d) List corrupt and poor-performing suppliers on the List of Restricted Suppliers, and*
- e) Recover the Municipality's losses and cancel the contracts.*

#### **10.5 *criminal prosecution***

In addition to the fact that the MFMA requires the reporting of any losses caused by criminal activity, section 34 of the Prevention and Combating of Corrupt Activities Act (12 of 2004) also contains very strict prescripts in this regard:

“any person in a position of authority who knows or ought reasonably to have known or suspect that another person has committed: Corruption or the offences of theft, fraud extortion, forgery or uttering of a forged document, involving R100 000 or more must report such knowledge or suspicion or cause same to be reported to a police official.”

Fraud, theft, corruption, and forgery matters above the R100 000 threshold, should be reported to the SAPS.

In the event that fraud, theft or corruption was detected, investigated, and warranted disciplinary proceedings, prosecution or action aimed at the recovery of losses will be initiated and the matter will be reported to the SAPS, regardless of the value of the offence. All criminal cases should be reported to the SAPS in line with section 32 of the MFMA.

#### **10.6 Civil recovery**

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

The Prevention of Organized Crime Act of 1998 makes provision for property tainted by criminal activity to be forfeited to the state by way of a civil action. Commonly called civil asset forfeiture, this allows the state to confiscate suspected criminals' assets purely through a civil action against the property, without the need to obtain a criminal conviction against the owner of the property.

In terms of section 300 of the CPA, the Court may award compensation where the committing of an offence has caused damage to or loss of property to any person or KwaDukuza Municipality. On the conviction of any person, the court can be requested to make the section 300 restitution part of the court order. Such an order has the same force as a civil order. The benefit of using this mechanism is that it comes without any legal fees and is driven by the State Prosecutor.

If the Municipality has suffered financial losses due to corrupt or fraudulent behaviour by officials should pursue the possibility of recovering some or all of its losses from the perpetrator's pension or provident fund. In terms of section 37D (b) (ii) of the Pension Funds Act (24 of 1956), the employer may recover compensation in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which:

- a) The member has in writing admitted liability to the employer; or*
- b) Judgment has been obtained against the member in any court, including a magistrate's court.*

KwaDukuza Municipality must therefore either obtain a cession of the Pension Fund benefits by the employee, or supply the relevant Pension



Fund with a court judgment indicating its entitlement. The judgment may either be obtained through a civil claim procedure or a section 300 ruling in terms of the Criminal Procedure Act, as described above.

#### **11 COMPLIANCE WITH THE STRATEGY**

Any employee who fails to comply with the requirements of provisions of this strategy is subject to appropriate disciplinary action.

#### **12 MONITORING AND EVALUATION**

The KwaDukuza Municipality Integrity and Ethics Management section located in the office of the Municipal Manager shall monitor and evaluate the implementation of the Anti-Corruption Strategy.

#### **13 REVIEW OF THE EFFECTIVENESS OF THE ANTI-CORRUPTION STRATEGY**

The Anti-fraud and Corruption statement shall be reviewed annually to reflect the current stance on risk management. Risk management traverses all strategic and operational activities of the municipality. As such the principles of risk management shall be implemented by each and every employee of the municipality within his or her specific role in meeting the objectives of the Municipality.

The amendment of this Strategy or any of the provisions thereof shall be reduced in writing and approved by the delegated official. KwaDukuza Municipality Integrity and Ethics Management section shall be responsible to facilitate the review of the policy.

#### **14 FORMAL APPROVAL OF THE STRATEGY**

The Anti-Fraud and Corruption Strategy is formally approved for implementation by KwaDukuza Municipality with effect from date of signature.

**RECOMMENDED FOR APPROVAL BY:**

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**RISK MANAGEMENT COMMITTEE**

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**DATE**

**ADOPTED BY COUNCIL:**

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**RESOLUTION NO**

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**DATE**