

BA-PHALABORWA MUNICIPALITY



ANTI-FRAUD AND CORRUPTION STRATEGY 2022/23

Inclusive of Policy, control
strategies and procedures for
investigations

Table of Contents

1	Introduction	1
1.1	Purpose	1
1.2	Statement of attitude to fraud	1
1.3	The Public Service Anti-Corruption Strategy	2
1.4	The Local Government Anti-Corruption Strategy	2
1.5	Ba-Phalaborwa Municipality's anti-fraud and corruption strategy and prevention plan	4
1.6	Definition of fraud and corruption	4
1.6.1	Forms of corruption	5
2	Policy on Fraud and Corruption	7
2.1	Background	7
2.2	Scope of the policy	7
2.3	Policy	7
2.4	Actions constituting fraud and corruption	8
3	Fraud and Corruption control strategies	9
3.1	Structural strategies	9
3.1.1	Responsibilities for fraud and corruption risk management	19
3.1.3	Senior management commitment	10
3.1.4	Assessment of fraud and corruption risk	11
3.1.5	Employee awareness	11
3.2	Operational strategies	12
3.2.1	Internal controls	12
3.2.2	Prevention strategies	12
3.2.3	Detection strategies	15
3.2.4	Response strategies	16
3.3	Maintenance strategies	19
3.3.1	Review of the effectiveness of the Anti-Fraud and Corruption Strategy and Prevention Plan	19
3.3.2	Review and updating the Anti-Fraud and Corruption Strategy and Prevention Plan	19
4	Procedures for investigations	20
4.1.1	Handling a fraud allegation	20
4.1.2	Documentation of the results of the investigation	21
4.1.3	Other matters	21
4.2	Reporting fraud to police and / or external parties	21
4.3	Recovery and other remedies	22
4.4	Signed by the AO	22
A	Regulatory Framework	23
A.1	Summary of statutory offences relating to dishonesty	23
A.2	Statutes combating fraud and corruption	28
	Approvals	29

Introduction

1.1 Purpose

The purpose of the document is to provide guidance to enable Ba-Phalaborwa Municipality to develop a fraud prevention strategy and to improve accountability, efficiency and effective administration within the municipality, including decision-making and management conduct which promotes integrity.

1.2 The objectives of this strategy could be summarized as follows:

- a) The primary objective of this strategy is to prevent fraudulent conduct before it occurs by encouraging a culture within the Ba-Phalaborwa Municipality where all employees, members of the public and other stakeholders continuously behave with and promote integrity in their dealings with, or on behalf of municipality.
- b) Development of anti-corruption capacity in the municipality;
- c) Improving the application of systems, policies, procedures and regulations in the municipality;
- d) Changing aspects that undermine the municipal integrity and facilitate unethical conduct, fraud and corruption and allow those to go unnoticed or unreported.

1.2 Statement of attitude to fraud

Ba-Phalaborwa Municipality requires all staff at all times to act honestly and with integrity and to safeguard the municipal resources for which they are responsible. The Municipality is committed to protecting all revenue, expenditure and assets from any attempt to gain illegal financial or other benefits.

Fraud represents a significant potential risk to the **Ba-Phalaborwa Municipality's** assets, service delivery efficiency and reputation. Ba-Phalaborwa Municipality will not tolerate corrupt or fraudulent activities, whether internal or external, and will vigorously pursue and prosecute any parties, by all legal means available, which engage in such practices or attempt to do so.

Consequently, any case will be thoroughly investigated and appropriate corrective action will be taken against anyone who is found guilty of corrupt conduct. This may include referral to the South Africa Police Services.

1.3 REGULATORY LEGISLATION

1The Public Service Anti-Corruption Strategy

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

A range of other resolutions emanated from this Summit and all the sectors committed to implementing these.

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

1.3 The Local Government Anti-Corruption Strategy

The strategy focuses mainly on the municipal organisation and looks at implementation of employee and councillor codes of conduct, and improved enforcement of applicable systems, policies and procedures. It prescribes the vetting of municipal employees, both existing and prospective, to ensure that they are not predisposed to corruption.

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

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

Municipal Finance Management Act 56 of 2003

Section 112(1) stipulates that the Supply Chain Management Policy of a municipality must be fair, equitable, transparent, competitive and cost effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover at least the following:

(m) Measures for-

(i) Combating fraud, corruption, favoritisms and unfair and irregular practices in municipal supply chain management, and

(ii) Promoting ethics of officials and other role players involved in municipal supply chain management.

Criminal Procedure Amendment Act 65 of 2008.

To amend the Criminal Procedure Act, 1977, to provide for the postponement of certain criminal proceedings against an accused person in custody awaiting trial through audiovisual link; to further regulate the falling away of certain convictions as previous convictions after the expiry of a fixed period; to provide for the

expungement of criminal records of certain persons in respect of whom certain sentences have been imposed after the compliance with certain requirements and the expiry of a fixed period; to provide for the expungement of certain criminal records of persons under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect; and to provide for matters connected therewith.

1.4 Ba-Phalaborwa Municipality's anti-fraud and corruption strategy and prevention plan

This Anti-Corruption Strategy and Fraud Prevention Plan has been developed as a result of the expressed commitment of Government to fight corruption. It is also an important contribution to the National Anti-Corruption Strategy of the country and supplements both the Public Service Anti-Corruption Strategy and the Local Government Anti-Corruption Strategy.

1.5 Definition of fraud and corruption

In South Africa, the Common Law offence of fraud is defined as "the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another". The term "fraud" is also used in a wider sense by the general public.

In this regard, the term is used in this document in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty. In other words, fraud can be described as any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

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

- The illegal or unauthorised performance of such other person's powers, duties or functions;
- An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules; The achievement of an unjustified result; or

- Any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of Corruption.

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

1.5.1 Forms of corruption

Corruption takes various forms in the Municipality and elsewhere in society. The following are examples of different types of corruption.

1.5.1.1 Bribery

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

1.5.1.2 Embezzlement

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

1.5.1.3 Fraud

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

1.5.1.4 Extortion

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

1.5.1.5 Abuse of power

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

1.5.1.6 Conflict of interest

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

1.5.1.7 Abuse of privileged information

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

1.5.1.8 Favouritism

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

1.5.1.9 Nepotism

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

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

2 Policy on Fraud and Corruption

2.1 Background

This policy is established to facilitate the development of controls which will assist in the prevention and detection of fraud and corruption, as well as provide guidelines as to how to respond should instances of fraud and corruption be identified. This policy is also established to give effect to the various legislative instruments as described in the previous section.

2.2 Scope of the policy

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

2.3 Policy

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

Prevention, detection, response and investigative strategies will be designed and implemented. These will include any existing controls (system controls and manual internal controls) and those currently prescribed in existing policies, procedures and other relevant prescripts to the activities of the Institution.

It is the responsibility of all employees to report all incidents of fraud and corruption that may come to his / her attention to his / her supervisor. Alternatively, such reports can be made by way of submitting a report through the prescribed whistle blowing mechanism.

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

All Managers are responsible for the detection, prevention and investigation of fraud and corruption, within their areas of responsibility.

We believe that there is only one effective way of fighting fraud and other corrupt practices and that is by instilling the reality amongst employees and other stakeholders, such as suppliers of goods and services, that fraud and corruption do not pay and will be detected and punished severely.

2.4 Actions constituting fraud and corruption

Fraud and corruption manifests in a number of ways and varying degrees of intensity. These include, but are not limited to:

- Unauthorised private use of the Institution's assets, including vehicles;
- Falsifying travel and subsistence claims;
- Conspiring unfairly with others to obtain a tender;
- Disclosing proprietary information relating to a tender to outside parties;
- Accepting inappropriate gifts from suppliers;
- Employing family members or close friends;
- Operating a private business in working hours;
- Stealing equipment or supplies from work;
- Accepting bribes or favours to process requests;
- Accepting bribes or favours for turning a blind eye to a service provider who does not provide an appropriate service;
- Submitting or processing false invoices from contractors or other service providers; and
- Misappropriating fees received from customers, and avoiding detection by not issuing receipts to those customers.

3 Fraud and Corruption control strategies

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

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

3.1 Structural strategies

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

3.1.1 Responsibilities for fraud and corruption risk management

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

3.1.1.1 *Accounting Authority / Officer*

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

3.1.1.2 *Assurance Providers*

The Risk Management Committee and the Audit Committee will serve as assurance providers on the institution performance with regard to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties.

The Risk Management Unit will compile a report to be presented to the Risk Management Committee and Audit Committee.

The Risk Management Committee and Audit Committee shall meet at least once a quarter to discuss the following issues:

- Progress made in respect of implementing the Anti-Fraud and Corruption Strategies and Fraud Prevention Plans;
- Reports received by the Institution regarding fraud and corruption incidents with the view to making any recommendations to the Accounting Authority / Officer and Chairman of the Audit Committee;
- Reports on all investigations initiated and concluded; and
- All allegations received via the hotline.

3.1.2 An ethical culture

Ba-Phalaborwa Municipality is required to conduct itself in an ethical and moral way.

Ethics are concerned with human character and conduct and deal with questions of right and wrong, appropriate and inappropriate behaviour and what constitutes good or evil. Ethical conduct is based on a set of principles referred to as values or norms. The collective ethical conduct of all the individual employees of Ba-Phalaborwa Municipality reflects its ethical conduct. In this regard, the highest standards of ethics are required by employees when fulfilling their duties.

Good governance indicates that Ba-Phalaborwa Municipality should develop codes of conduct (ethics) as part of their corporate governance frameworks. All employees are expected to abide by the Code of Conduct of the municipality

3.1.3 Senior management commitment

Senior management is to be committed to eradicating fraud and corruption and ensuring that the Ba-Phalaborwa Municipality strives to be perceived as ethical in all its dealings with the public and other interested parties. In this regard, senior management, under the guidance of the Accounting Authority / Officer, will ensure that it does not become complacent in dealing with fraud and corruption and that it will ensure Ba-Phalaborwa Municipality's overall fraud and

corruption strategy is reviewed and updated regularly. Furthermore, senior management will ensure that all employees and stakeholders are made aware of its overall anti - fraud and corruption strategies through various initiatives of awareness and training.

3.1.4 Assessment of fraud and corruption risk

Ba-Phalaborwa Municipality, under the guidance of the Accounting Officer and the Chairperson of the Risk Committee, will conduct annual fraud and corruption risk assessments to identify potential fraud and corruption risk exposures of the municipality. This process will ensure that actions to address the identified fraud and corruption risk exposures will be implemented to mitigate these exposures.

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

3.1.5 Employee awareness

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

- Anti-Fraud and Corruption strategy;
- Code of Conduct for employees;
- Whistle blowing policy;
- How to respond to fraud and corruption; and
- Manifestations of fraud and corruption in the workplace.
- The Manager: Risk management will be responsible for employee awareness and he/she will arrange and schedule awareness sessions throughout the year.

3.2 Operational strategies

3.2.1 Internal controls

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

All areas of operations require internal controls, for example:

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

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

3.2.2 Prevention strategies

A number of combined initiatives result in an overall preventative environment in respect of fraud and corruption. These include the following:

3.2.2.1 Employee awareness

Employee awareness of Ba-Phalaborwa Municipality's Anti-Fraud and Corruption Strategy, Code of Conduct, Whistle blowing policy and the manifestation of fraud and corruption in the workplace all assist in the creation of an environment which may be considered to be hostile to a would-be transgressor. The main purpose of fraud and corruption awareness workshops / training is to

assist in the prevention, detection and reporting of fraud and corruption by raising the level of awareness as to how fraud and corruption is manifested in the workplace.

3.2.2.2 Pre-employment screening

Pre-employment screening will be carried out for all appointments, and evidence of such screening will be maintained by the Corporate Services Department. Consideration should be given to the following pre-employment screening:

- Verification of identity.
- Police criminal history.
- Reference checks with the two most recent employers – this will normally require telephone contact.
- A consideration of any gaps in employment history and the reasons for those gaps.
- Verification of formal qualifications claimed.

Ba-Phalaborwa Municipality's policy of pre-employment screening will cover all new and promoted employees including those with administrative responsibilities or computer access. The screening will be performed by a person / people nominated by the Corporate Services Department in conjunction with the Accounting Officer to ensure that screening is consistent and appropriately resourced throughout all Departments. Screening will be conducted in accordance with the classification of the employee or the levels of screening outlined below.

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

Level 1 – All employees (including those with administrative functions or computer access)

- Verification of claimed educational qualifications;
- An independent reference check directly with two referees nominated by the applicant or previous employers; and

- Criminal history checks (after authorisation has been obtained from the prospective employee).

Level 2 – All Managers and above, IT and Finance staff

- All Level 1 checks;
- Employment history checks;
- Directorship and membership searches; and
- Insolvency/credit search.

3.2.2.3 Recruitment procedures

Recruitment will be conducted in accordance with the requisite recruitment procedure. It will be a transparent process and all appointments will be confirmed only 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 Corporate Services Department and withdraw from any further procedures.

3.2.2.4 Internal audit plan

A robust Risk-Based Internal Audit plan, which is guided by the Municipality's risk register and considers fraud and corruption risks serves as an effective preventative measure. The Internal Audit Unit will compile such a plan on an annual basis.

3.2.2.5 Fraud and corruption prevention plan

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

3.2.2.6 Disclosure of interests

All senior managers of Ba-Phalaborwa Municipality will be required to disclose their specific personal assets and business interests on an annual basis. This register will be kept with the Accounting Officer.

3.2.3 Detection strategies

Detection of fraud and corruption may occur through:

- Vigilance on the part of employees, including line management;
- The Internal Audit function;
- Ad hoc management reviews;
- Anonymous reports; and
- The application of detection techniques.

The individual identified within Ba-Phalaborwa Municipality will be responsible for developing detection strategies, and will work closely with line management and the Internal Audit function for this purpose.

Ba-Phalaborwa Municipality will embark on a number of initiatives to detect fraud and corruption in the workplace.

3.2.3.1 *Internal Audit*

Similar to the prevention strategies, a robust Risk-based Internal Audit plan which takes into consideration Fraud and Corruption risks also serves as an effective detection measure. As part of the detection strategy, the Internal Audit plan will cover the following:

- Management accounting reporting review: Using relatively straightforward techniques in analysing the Institution's management accounting reports, trends can be examined and investigated which may be indicative of fraudulent conduct. Some examples of the types of management accounting reports that can be utilised on a compare and contrast basis are:
 - Budget reports for each department / section;
 - Reports comparing expenditure against public sector benchmarks; and
 - Reports highlighting unusual trends in bad or doubtful debts.

Ba-Phalaborwa Municipality will implement a strategy to ensure appropriate management accounting report reviews are conducted.

3.2.3.2 External audit

Ba-Phalaborwa Municipality recognises that the external audit function is an important control in the detection of fraud. The Chief Finance Officer will need to hold discussions with all engaged external auditors to ensure that due consideration is given, by the auditors, to ISA 240 *“The Auditors’ Responsibility to Consider Fraud in the Audit of a Financial Statement”*.

3.2.4 Response strategies

3.2.4.1 Reporting fraud and corruption – a Whistle blowing policy

One of the key obstacles to fighting fraud and corruption is the fear by employees of being intimidated to identify or “blow the whistle” on fraudulent, corrupt or unethical practices witnessed in the work place. Those who often do “blow the whistle” end up being victimised and intimidated. For this reason, the Institution will adopt a Whistle Blowing Policy setting out the detailed procedure which must be followed in order to report any incidents of fraud and / or corruption. This policy will be designed to comply with the provisions of the Protected Disclosures Act.

Any suspicion of fraud and corruption will be treated seriously and will be reviewed, analysed, and if warranted, investigated. If an employee becomes aware of a suspected fraud, corruption or any irregularity or unethical behaviour, such issues should be reported in terms of a Whistle Blowing Policy.

3.2.4.2 Investigating fraud and corruption

Dealing with suspected fraud and corruption

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

Investigations

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

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

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

Investigations may involve one or more of the following activities:

- Interviewing of relevant witnesses, internal and external, including obtaining statements where appropriate;
- Reviewing and collating documentary evidence;
- Forensic examination of computer systems;
- Examination of telephone records;
- Enquiries from banks and other financial institutions (subject to the granting of appropriate approval/Court orders);
- Enquiries with other third parties;
- Data search and seizure;
- Expert witness and specialist testimony;
- Tracing funds / assets / goods;
- Liaison with the police or other law enforcement or regulatory agencies;
- Interviewing persons suspected of involvement in fraud and corruption; and
- Report preparation.

Any investigation into improper conduct within the Institution will be subject to an appropriate level of supervision by a responsible committee, having regard to the seriousness of the matter under investigation.

Disciplinary proceedings

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

Prosecution

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

Recovery action

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

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

Internal control review after discovery of fraud

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

The responsibility for ensuring that the internal control environment is re-assessed and for ensuring that the recommendations arising out of this assessment are implemented will lie with Line Management of the department / section concerned.

3.3 Maintenance strategies

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

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

3.3.2 Review and updating the Anti-Fraud and Corruption Strategy and Prevention Plan

A central part of any fraud and corruption control programme should involve an ongoing review of fraud and corruption risk exposures. Fraud and Corruption risk assessments will also be conducted annually at the same time as the review of the Anti-Fraud and Corruption Strategy and Prevention Plan. As with the review, the Accounting Officer is ultimately accountable for this and may delegate a person to take responsibility.

4 Procedures for investigations

Ba-Phalaborwa Municipality has adopted a policy of investigating all reports of fraud and corruption, or other improper conduct. The investigation of fraud and corruption can be a complex and, at times, technical process and employees should be aware of the consequences of a poorly conducted investigation, including:

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

To ensure that there is reasonable assurance that investigations are performed and reported properly, and recognising the limited resources within the Institution, external consultants (e.g. external auditors or forensic accountants) may be used to provide assistance to the Institution when a fraud is reported. The external consultant may be assisted by experienced personnel within the Institution who are sufficiently independent of the area or the matter under investigation. The Accounting Officer, within his / her delegated authority, will have the discretion to determine the appropriate external consultants and / or the Institution personnel to conduct investigations.

4.1.1 Handling a fraud allegation

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

The Accounting Officer will appoint an appropriate manager (usually within the Department / Section in which the alleged fraud or corruption has been identified) to conduct or co-ordinate an investigation into the allegations. The manager appointed to conduct or co-ordinate the investigation of an allegation of fraud may consult the Chairman of the Anti-Fraud and Corruption Committee on technical aspects of the investigation.

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

4.1.2 Documentation of the results of the investigation

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

4.1.3 Other matters

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

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

4.2 Reporting fraud to police and / or external parties

The Accounting Officer /Municipal Manager

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

- An employee/volunteer of Ba-Phalaborwa Municipality;
- A client of the Ba-Phalaborwa Municipality;
- A research grant recipient of Ba-Phalaborwa Municipality; or
- A supplier to Ba-Phalaborwa Municipality.

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

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

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

4.3 Recovery and other remedies

Ba-Phalaborwa Municipality has adopted a policy wherein it will actively pursue the recovery of any money or property lost through fraud, provided there is a strong prospect of a net benefit to Ba-Phalaborwa Municipality from such action.

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

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

A Regulatory Framework

A.1 Summary of statutory offences relating to dishonesty

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

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

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

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

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

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

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

- The illegal or unauthorised performance of such other person's powers, duties or functions;
- An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- The achievement of an unjustified result; or

- Any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corruption.
- The Act defines specific offences relating to the following categories of persons:
- Public Officers;
- Foreign Public Officials;
- Agents;
- Members of Legislative Authorities;
- Judicial Officers; and
- Members of the Prosecuting Authority.

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

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

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

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

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

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

- The interest consists of shareholding in a listed company;
- The public officer's conditions of employment do not prohibit him/her from acquiring such interests; or
- In the case of a tender process, the said officer's conditions of employment do not prohibit him/her from acquiring such interests as long as the interests are acquired through an independent tender process.

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

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

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

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

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

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

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

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

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

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

FICA imposes certain reporting duties and compliance obligations.

The Act imposes compliance obligations on so-called "accountable institutions" which are defined in Schedule 1 to the Act. These obligations include:

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

Regarding the reporting of suspicious transactions, FICA makes provision for a duty to report "*suspicious or unusual transactions*". In this regard it provides that any person who carries on a business or who manages is in charge of or is employed by a business and who knows or

suspects certain facts has a duty to report their knowledge or suspicion to the FIC within a prescribed period. Matters that require reporting include knowledge or suspicion of the following:

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

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

A.1.4 Protection of Constitutional Democracy Against Terrorist and Related Activities Act, Act 33 of 2004 ("POCDATARA")

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

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

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

A.2 Statutes combating fraud and corruption

A.2.1 Protected Disclosures Act, 26 of 2000

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

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

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

The Act prohibits the employer from:

- Dismissing, suspending, demoting, harassing or intimidating the employee;
- Subjecting the employee to disciplinary action;
- Transferring the employee against his or her will;
- Refusing due transfer or promotion;
- Altering the employment conditions of the employee unilaterally;
- Refusing the employee a reference or providing him/her with an adverse reference;

- Denying appointment;
- Threatening the employee with any of the above; or
- Otherwise affecting the employee negatively if the disclosure is made in terms of the Act.

Approval



Municipal Manager

Council Resolution: 193/22.

Council Resolution Date: 26/05/2022