



PUBLIC SECTOR INTEGRITY MANAGEMENT FRAMEWORK



REPUBLIC OF SOUTH AFRICA

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1 PREAMBLE

Whereas the Constitution of the Republic of South Africa, 1996 (the “Constitution”) enshrines the rights of all people in the Republic of South Africa and affirms the democratic values of human dignity, equality and freedom;

Recalling section 195 of the Constitution which establishes basic values and principles governing public administration across all spheres of government, including the promotion and maintenance of high standards of professional ethics;

Whereas the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and the rule of law;

Recognising with appreciation that policies, legislation and regulations were developed and implemented to manage integrity and promote good governance in the public sector;

Acknowledging the lack of enforcement and unsatisfactory implementation of certain aspects of the regulatory framework managing integrity and promoting good governance in the public sector; ;

Further Acknowledging that certain provisions of the regulatory framework managing integrity and promoting good governance in the public sector are obsolete;;

Noting the significant efforts that have been made by government institutions together with civil society and representatives from the business sector to promote integrity, reduce corruption and improve public and corporate governance;

Observing that corruption is not declining despite efforts made;

NOW THEREFORE the Public Sector Integrity Management Framework is introduced to provide a comprehensive Integrity Framework derived from the existing regulatory framework dealing with a compendium of ethical and good governance measures in order to align all measures regulating ethics and integrity in the public sector, with the following objectives:

1. Strengthening existing measures regulating probity in the public service;
2. Strengthening capacity to prevent corruption;
3. Monitoring and Evaluation to ensure compliance; and
4. Enforcement as a deterrent.

Convinced that such a Framework will help to protect the integrity of government and foster public confidence in institutions of the State.

2 DEFINITIONS

In this Framework, unless the context indicates otherwise-

“cadre” means a competent civil servant who cares for the well-being of inhabitants of South Africa and is responsive to the development needs of inhabitants;

“conflict of interest” means a conflict between the public duties and private interests of a public servant, in which the public servant has private interests which could improperly influence the performance of his/her official duties and responsibilities;

“corruption” means any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);

department” means a national department, a national government component, the Office of the Premier or a provincial department or a provincial government component;

“good governance” has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimised, and that the interests of the most vulnerable in society are given attention.

“ethics” is broadly defined as well based standards of right and wrong that prescribe our rights, obligations and benefits to society. Ethics is about how we ought to live, treat others, run or manage our lives and organisations.

“employment” means appointment in the public service or secondment to an institution/ department for which the appointee receives remuneration or is rewarded for performance of work;

“framework” means Public Sector Integrity Management Framework

“gift” means a token which is bestowed voluntarily without any expectation of tangible compensation, and for which no direct or indirect contractual obligations are imposed;

“hospitality” can be any food, drink, entrance to events, accommodation or entertainment provided free of charge or heavily discounted and for which no direct or indirect contractual obligations are implied;

“influence peddling” means the practice of using one’s influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for payment in money or kind;

“integrity” means steadfast adherence to a strict moral or ethical code, policy or legal instruments and preceding codes;

“inside information” means any confidential information, classified or not, to which a public servant has access by virtue of official position and which has not been made available to the general public;

“private benefits includes, but not limited to, favours, donations, grants and sponsorships that directly or indirectly benefit the public servant;

“public servant” means any employee of a national and provincial department or any employee of a municipality;

“public sector” inclusive of local government;

“public service” only include national and provincial departments;

“remunerative work” means any work performed by a public servant outside the Public Service for which a reward or pay for services rendered is made.

3 PURPOSE

The purpose for introducing the Public Sector Integrity Management Framework is to strengthen measures and standards for managing integrity and promotes ethical conduct in the public service. This Framework provides provisions for managing unethical conduct that can arise as a result of financial interests, gifts, hospitality and other benefits, post-public employment and remunerative work outside the public service. Further proposals are made in respect of deployment of ethics officers in the public service and minimum conduct requirements. Some of these measures will require legislation to become enforceable. The Department of Public Service and Administration (DPSA) will also conduct communication and awareness workshops to explain all measures contained in the Framework and assist departments with implementation through developing implementation guidelines.

4 SCOPE OF APPLICATION

The Public Sector Integrity Management Framework is applicable to the following public servants –

- (a) All persons employed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), as amended;
- (b) Members of the SAPS, Correctional Services, Defence and Intelligence Services and educators only in so far as they are not contrary to the laws governing their employment;
- (c) Senior managers contemplated in (a) and (b) above, for a period of a maximum period after they have left the public service; and

- (d) Persons employed by municipalities, to the extent provided in the laws governing their employment.

5 PROBLEM STATEMENT

A myriad of challenges are apparent in the public service as far as implementation of ethical and anti-corruption measures is concerned, chief among them is non compliance with legislation and lack of enforcement. A summary of these measures dealing with a compendium of ethical and good governance measures is contained in Section 7 of this Framework.

There is great frustration about the delayed response of departments in preventing and combating corruption. Sometimes it takes several months for disciplinary processes to even be started. Officials are often suspended on full pay for months, if not years. Furthermore, there are significant inconsistencies in the type of sanctions applied. Allegations of corruption reported to the anti-corruption hotline are referred back to departments for follow-up, but because departments do not have sufficient investigative capacity, initial investigations are never completed. The ineffectiveness of the Protected Disclosure Act, 2000 has also resulted in the lack of confidence in blowing the whistle against unethical conduct and corruption. Furthermore, the Country Corruption Assessment (CCA) conducted in 2002, amongst others, highlighted gaps in our knowledge of corruption in relation to incidents, trends, perceptions, causes as well as anti-corruption measures in place to fight corruption. The lack of a central database of cases of corruption was also highlighted.

Below is a summary of both implementation and policy gaps that have been identified in some anti- corruption and integrity measures.

5.1 IMPLEMENTATION GAPS

Implementation of anti-corruption and good governance measures has not been satisfactory including the review to assess impact thereof. Some of the implementation gaps include:

- a) Limited implementation and adherence to the Code of Conduct. The conduct of some public servants as highlighted in the various government reports have identified a culture of unethical and undesirable conduct by some public servants.
- b) Non-compliance with the Financial Disclosure Framework. Since the inception of the Financial Disclosure Framework in April 2000 and subsequent expanded application to all senior managers in 2001, a hundred percent (100%) compliance rate has not been achieved. Disciplinary action against officials who fail to submit their financial disclosure forms has also never been instituted. Weak enforcement of anti-corruption measures perpetuates non- compliance. This is also exacerbated by the lack of

follow-up on recommendations of the Public Service Commission by some Executing Authorities on non-compliance with the Financial Disclosure Framework;

- c) Non-compliance with Section 30 of the Public Service Act dealing with remunerative work outside the public service and Section 31 dealing with recovery of losses;
- d) Non-compliance with the Minimum Anti-corruption Capacity Requirements;
- e) Supply chain management prescripts are not adhered to which results in tender related malpractices, fraud and corruption as a result of improperly awarded tenders, goods and services provided at grossly inflated prices, officials benefiting from government contracts, unnecessary purchases and payments for services not rendered;
- f) Weak enforcement and inconsistent application of disciplinary measures;
- g) Resignation and transfer to other departments before disciplinary processes could be instituted or concluded; and
- h) Ineffective implementation of the Protected Disclosures Act, 2000.

5.2 POLICY GAPS

The policy gaps which exist are as result of limited implementation of the measures which results in the measure not been fully effective. These gaps are as follows:

- a) The ambiguity with regard to the acceptance of gifts found in the Code of Conduct (Chapter 2 of the Public Service Regulations, 2001, as amended, and the Financial Disclosure Framework (Chapter 3 of the mentioned Regulations. In terms of the Code of Conduct, a public servant is prohibited from using his/her position to obtain private gifts or benefits. The financial disclosure framework prescribes that members of the Senior Management Service (SMS) must disclose gifts valued at R350.00 or more;
- b) Limited application of the Financial Disclosure Framework has resulted in 'unregulated public servants' having business interests which are in conflict with public interest. In terms of the Financial Disclosure Framework, only members of the SMS are required to disclose their financial interests annually to the relevant Executive Authority. Recent government reports on the implementation of the financial disclosure framework have pointed a policy gap in the disclosure system. According to the Public Service Commission and the Auditor General reports, the majority of public servants with business interests are officials on salary levels 4 to 8 and are excluded by the financial disclosure framework; and

- c) Despite the Public Service Anti-corruption Strategy identifying the need to regulate post-public employment when it was introduced in 2002, no measures have been put in place in this regard

6 INTERVENTIONS: FIGHTING CORRUPTION AND PROMOTE ETHICAL CONDUCT

In order to close the policy gaps and strengthen implementation of ethical and good governance measures, the following additional measures are proposed:

6.1 Acceptance of Gifts, Hospitality and other benefits

The following proposals are made with regard to acceptance and offering of gifts, hospitality and other benefits in the public service:

- 6.1.1 Public servants be prohibited from directly or indirectly soliciting or accepting gifts, hospitality or private benefits of any value from any person (natural and juristic) that is contracted to the department to which the public servant is an employee;
- 6.1.2 Any person, when rendering service to departments in the public service be prohibited from offering gifts, hospitality or private benefits to employees or their immediate families and relatives;
- 6.1.3 Public servants be prohibited from accepting or soliciting any gifts, hospitality and private benefits from any person in return for performing or not performing his or her official duties.
- 6.1.4 The prohibitions of gifts exclude all tokens that may be offered or accepted within normal standards of courtesy or protocol by any entity. This will include tokens such as conference packages (pens, bags, t-shirts, etc) and any promotional materials or gifts that are often offered at functions and events; and
- 6.1.5 In situations where public servants cannot decline a token of appreciation because it might be considered culturally disrespectful, such tokens must be declared and registered in the departmental gift register. 6.1.6 These gifts will be registered in the Special Anti-corruption Unit web site to promote transparency.

6.2 Disclosure of Financial Interests and Assets of employees

- 6.2.1 The requirement to disclose financial interests and assets be extended to all employees,
- 6.2.2 An employee whose spouse, partner, business associate or close family member, stand to acquire any direct benefit from a contract concluded with their department, must disclose in writing full particulars of the benefit to the Ethics Officer and withdraw from participating in any manner whatsoever in the process relating to that contract.
- 6.2.3 Department to appoint/designate Ethics Officer/s depending on the size of the department to scrutinise, assess and analyse the disclosure forms of all employees in their respective department;;
- 6.2.4 An employee to forward his or her disclosure form to the designated Ethics Officer ;
- 6.2.5 An employee to disclose every time there is a change of status as opposed to annually as is currently required;
- 6.2.6 The Head of Department be assigned the responsibility to oversee the approval of disclosure reports compiled by Ethics Officers;
- 6.2.7 The disclosure forms of Ethics Officer/s be forwarded to their respective Head of Department for submission to the Public Service Commission;
- 6.2.8 The disclosure forms of Heads of Departments be forwarded to their respective Executive Authorities for submission to the Public Service Commission;

6.3 Amendments to the Financial Disclosure Form

- 6.3.1 The financial disclosure form be amended to include a requirement to attach a copy of the approval received to perform any remunerative work outside the public service;
- 6.3.2 The financial disclosure form be amended to include job description, Identity number of the public servant and for property declaration include ERF no and Unit No;
- 6.3.3 The financial disclosure form be amended to include income tax and company registration no, attach the certificate of registration, and specify the sector/s in which interests are held ;
- 6.4 Conditions for employees with business interests seeking to conduct business with government

6.4.1 An employee with private business interests to first seek approval from the Executive Authority before conducting business with government

6.4.2 In considering an application contemplated in subsection 6.4.1, the Executive Authority or designated official must take into consideration:

- (i) The nature of goods or services to be supplied to Government by the entity concerned;
- (ii) The nature and extent of the business interest of the employee concerned in that entity;
- (iii) The nature and extent of any adverse financial, operational and other circumstances for the state, the employee concerned or members of the public if the application is not approved, and
- (iv) Whether the approval of the application will be consistent with:
 - a. Fair, equitable, transparent, competitive and cost effective procurement of goods or services; and
 - b. Applicable national treasury procurement regulations and policies.

6.5 Restrictions on Remunerative Work outside the Public Service

6.5.1 No employee shall perform or engages himself or herself to perform remunerative work outside his of her employment in the relevant department, except with the written permission of the executive authority of the department.

6.5.2 In considering an application contemplated in subsection 1.4.1, the Executive Authority or designated official must take into account the following conditions:

- (i) The nature and extend of work to be undertaken;
- (ii) The time required for the outside work;
- (iii) The work load of the applicant;
- (iv) The employees performance record;
- (v) The possible reputation impact on the department and government; and
- (vi) Utilisation of states property and resources.

6.5.3 The executive authority shall decide whether or not to grant permission, contemplated in subsection 6.5.1 within 60 days after the receipt of the request from the employee in question.

6.5.4 If the executive authority fails to make a decision within the 60 day period, it would be deemed that such permission was given.

6.5.5 Employees to attach such approval when submitting their financial disclosure forms to Ethics Officer/s

6.6 Post-public employment

The public service does not have measures in place to regulate post-employment activities of former public servants. It is recognised that public servants may abuse their position to benefit certain individuals, themselves, or companies in exchange for favours, such as employment opportunities, after they have left the public service. The public service is introducing this control regime which aim is 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 -

- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office;
- (b) obtaining preferential treatment or privileged access to the Government after leaving public office;
- (c) taking personal advantage of information obtained in the course of official duties before it becomes generally available to the public; and
- (d) 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:

6.6.1 Senior public servants who are about to resign from the public service shall disclose in a confidential form all confirmed offers of employment to the Executive Authority ;

6.6.2 The Executive Authority shall scrutinise the disclosure to ensure that there is no conflict of interest between the officials 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;

6.6.3 Should there be any conflict of interest, the senior official shall not, within 12 months after leaving the public office:

- a) 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;
- b) The Executive Authority shall retain the authority to reduce or waive this limitation period (cooling-off period) of employment depending of the circumstances of each case;
- c) Private entities that have any existing business contracts or stand to acquire business contracts with the public service are prohibited from recruiting senior public servants that represent the public service in those business contracts or are doing the same or related work to what the public entity is rendering in the public service. Service Level Agreements (SLAs) to include a clause restricting the recruitment of public senior servants by private entities and informing them of blacklisting of such companies ; and'
- d) Employment contract of senior managers be amended to include a clause that informs them of these provisions.

It is critical to highlight the challenges in implementing post-employment restrictions. For these particular proposals challenges in implementation could arise as a result of managing the application of the restriction so as to not discourage potential public servants from joining the public service. In addition, considerations should be given to situations where an official serving the 'cooling off' period is remunerated. Even though the practices at the international level exist, applications differ from country to country. For South Africa careful consideration should be given to the imperatives of the democratic transformation and economic development.

6.7 Designation and Appointment of Ethics Officers

In September 2003, Cabinet approved the requirements for minimum anti-corruption capacity for departments in the Public Service. In terms of these minimum anti-corruption standards, departments are required to create and promote an ethical organisational culture and to provide guidelines for how every member of the department should behave. Ethical conduct in the public service is required by the Constitution. It is the cornerstone of sound governance and a core responsibility of public office. The minimum anti-corruption capacity requirements call for the appointment of an "ethics champion" in departments who is responsible to drive ethics and anti-corruption initiatives.

An executive authority designates or appoints such number of ethics officer or officers as may be appropriate for the department to perform the following functions:

- Promote integrity and ethical behaviour in departments;
- Advise employees on ethical matters;
- Ensure organisational integrity of policies, procedures and practices;

- Identify and report unethical behaviour and corrupt activities to the head of department;
- Administer and manage the implementation of the Framework in departments;
- Monitor and evaluate the implementation of the Framework ;
- Develop and implement awareness programmes to educate officials on ethics, good governance and anti-corruption measures;
- Keep a register of all public servants under investigation and those disciplined for corruption and provide to DPSA Special Anti-corruption Unit;
- Liaise with the DPSA Special Anti-corruption Unit regarding all disclosures; and
- Manage and administer the e-filing of financial declaration forms.

The coordination and reporting on the implementation of the Framework will be managed the Special Anti-corruption Unit and through the Governance and Administration Anticorruption Working Group as part of Outcome 12, Output 4. The Working Group will:

1. Ensure that the Framework is implemented, monitored and evaluated;
2. Approve and adopt the implementation plan to give effect to the Framework;
3. Provide quarterly reports on the implementation progress and resolution of reported cases to the MPSA and Cabinet;
4. Approve evaluation reports submitted by the Head of the Department for adoption;
5. Submit monitoring and evaluation reports for endorsement by the MPSA and Cabinet; and
6. Compile an annual progress report for presentation to Cabinet and Parliament.

6.8 Enforcement

In order to improve enforcement of the Framework, all performance agreements of employees including Heads of Departments will include a specific Key Performance Area that binds and commits an employee to comply with these measures. For example, the Performance Agreement will bind the employee to amongst others:

- a) Submit financial disclosure form; and
- b) If performing remunerative work outside the public service, attach the approval.

Any employee who fails to comply with the requirements of provisions of this Framework contained in legislation, is subject to appropriate disciplinary action.

An Executive Authority in the public service shall immediately take appropriate disciplinary steps against a Head of Department who fails to comply with provisions of this Framework contained in legislation, and report to the Minister for the Public Service and Administration (MPSA) particulars of the non-compliance and the disciplinary steps taken (s16A of the Public Service Act).

The Special Anti-corruption Unit and the head of department in the public service shall immediately take appropriate disciplinary steps against an employee who fails to comply with provisions of this Framework contained in legislation, and report to the MPSA particulars of the non-compliance and the disciplinary steps taken (s16A of the Public Service Act).

The MPSA shall report to Cabinet, through the relevant Premier to the Executive Councils of relevant province and to Parliament every non-compliance with the requirements of this Framework contained in legislation by executive authorities and employees (s16A of the Public Service Act).

6.9 Strengthening Investigation and disciplinary capacity through the SPECIAL ANTI-CORRUPTION UNIT

The Special Anti-corruption Unit will liaise with Ethics Officers and investigate all potential conflict of interest and ensure disciplinary measures are taken against officials who have violated provisions made in this Framework.

7 ALIGNMENT OF POLICIES, LEGISLATION AND RELATED INSTRUMENTS

7.1 IN SEARCH OF A PUBLIC SECTOR CADRE

7.1.1 CODE OF CONDUCT FOR PUBLIC SERVANTS IN NATIONAL AND PROVINCIAL DEPARTMENTS (CHAPTER 2 OF PUBLIC SERVICE REGULATIONS, 2001, AS AMENDED)

The Code of Conduct for the Public Service

An employee-

1. is faithful to the Republic and honours the Constitution and abides thereby in the execution of her or his daily tasks;
2. puts the public interest first in the execution of her or his duties;
3. loyally executes the policies of the Government of the day in the performance of her or his official duties as contained in all statutory and other prescripts;
4. strives to be familiar with and abides by all statutory and other instructions applicable to her or his conduct and duties; and
5. co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

The Code of Conduct also defines the relationship of an employee with the public as follows:

An employee-

6. promotes the unity and well-being of the South African nation in performing her or his official duties;
7. will serve the public in an unbiased and impartial manner in order to create confidence in the public service;
8. is polite, helpful and reasonably accessible in her or his dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
9. has regard for the circumstances and concerns of the public in performing her or his official duties and in the making of decisions affecting them;
10. is committed through timely service to the development and upliftment of all South Africa;
11. does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
12. does not abuse her or his position in the public service to promote or prejudice the interest of any political party or interest group;
13. respects and protects every person's dignity and her or his rights as contained in the Constitution; and
14. recognises the public's right of access to information, excluding information that is specifically protected by law.

Furthermore, the Code of Conduct defines relationships amongst employees in the following manner:

An employee-

15. co-operates fully with other employees to advance the public interest;
16. executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
17. refrains from favouring relatives and friends in work-related activities and never abuses her or his authority or influences another employee, nor is influenced to abuse her or his authority;

18. uses the appropriate channels to air her or his grievances or to direct representations;
19. is committed to the optimal development, motivation and utilisation of her or his staff and the promotion of sound labour and interpersonal relations;
20. deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
21. refrains from party political activities in the workplace.

In addition, the Code of Conduct stipulates that an employee should perform his or her duties in the following manner:

22. strives to achieve the objectives of her or his institution cost-effectively and in the public's interest;
23. is creative in thought and in the execution of her or his duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
24. is punctual at work, meetings and events and in the execution of her or his duties;
25. executes her or his duties in a professional and competent manner;
26. does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties;
27. will recuse herself or himself from any official action or decision-making process which may result in improper personal gain and this should be properly declared by the employee;
28. accepts the responsibility to avail herself or himself of ongoing training and self development throughout her or his career;
29. is honest and accountable in dealing with public funds and uses the public service's property and other resources effectively, efficiently, and only for authorised official purposes;
30. promotes sound, efficient, effective, transparent and accountable administration:
31. in the course of her or his official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;
32. gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and

33. honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

With regard to personal conduct and private interests, the Code of Conduct regulates as follows:

That an employee-

34. during official duties, dresses and behaves in a manner that enhances the reputation of the public service;
35. acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
36. does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes.
37. does not use or disclose any official information for personal gain or the gain of others; and
38. does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.

7.1.2 CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS (Schedule 2 to the Municipal Systems Act, 200)

According to the Code,

A staff member of a municipality must at all times—

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

With regard to serving the public interest, the Code stipulates that:

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

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

Regarding personal gain,

A staff member of a municipality may not—

- a) use the position or privileges of a staff member or confidential information obtained as a staff member for private gain or to improperly benefit another person; or
- b) take a decision on behalf of the municipality concerning a matter in which that staff member or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.

7.1.3 CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS

According to the Code,

Supply chain management Practitioners should –

- a) Ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation and regulations including the Public Service

Regulations, National Treasury Regulations and Practice Notes and directives issues by accounting officers/authorities. They should ensure that public resources are administered responsibly;

- b) Be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group of individual. They should not abuse the power and authority vested in them.
- c) Comply with the Code of Conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations.

Regarding conflict of interest, the Code stipulates that:

- a) Supply chain management practitioners, to the extent required by their position, should declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- b) Practitioners should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties;
- c) Practitioners should not take improper advantage of their previous office after leaving their official position.

7.2 MANAGING FINANCIAL INTERESTS

7.2.1 PUBLIC SERVICE REGULATIONS

Chapter 3 of the Public Service Regulations, 2001 prescribes a requirement for certain categories of Government employees to disclose financial interests. These categories of employees include:

- a) Any person occupying a post on SMS in a national department, organisational component, provincial administration or provincial department; or
- b) in terms of section 36(3) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), approved or instructed by the relevant treasury to be the accounting officer of a national department, organisational component, provincial administration or provincial department;

According to the Regulations, the following types of interests are to be disclosed annually

(1) Shares and other financial interests in private or public companies and other corporate entities recognised by law:

- a) the number, nature and nominal value of shares of any type in any public or private company;
- b) the name of that company; and
- c) the nature and value of any other financial interests held in a private or public company or any other corporate entity.

(2) Directorships and partnerships

- a) the name, and type of business activity, of the corporate entity or partnership; and
- b) the amount of any remuneration received for such directorship or partnership.

(3) Remunerated work outside the public service:

- a) the type of work;
- b) the name, and type of business activity, of the employer; and
- c) the amount of the remuneration received for such work.

(4) Consultancies and retainerships:

- a) the nature of the consultancy or any retainership of any kind;
- b) the name, and type of business activity, of the client concerned; and
- c) the value of any benefits received for such consultancy or retainership.

(5) Sponsorships:

- a) the source and description of direct financial sponsorship or assistance; and
- b) the value of the sponsorship or assistance.

(6) Gifts and hospitality from a source other than a family member:

- a) A description and the value and source of a gift with a value in excess of R350;
- b) a description and the value of gifts from a single source which cumulatively exceed the value of R350 in the 12 month period contemplated in regulation C.1 or C.2 of this Chapter; and
- c) hospitality intended as a gift in kind.

(7) Ownership and other interests in land and property, whether inside or outside the Republic:

- a) A description and extent of the land or property;
- b) the area in which it is situated; and

- c) the value of the interest.

Any employee who fails to disclose an interest in terms of the Regulations; or when disclosing an interest willfully provides incorrect or misleading details, is guilty of misconduct.

7.2.2 LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT (Schedule 2)

Regarding the disclosure of benefits, the Code of Conduct for Municipal Staff members contained in the Municipal Systems Act stipulates that:

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

Furthermore, with regard to Gifts, Rewards and Favours, the Code stipulates that:

A staff member of a municipality may not request, solicit or accept any reward, gift or favour for-

- a) persuading the council of the municipality or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
- b) making a representation to the council, or any structure or functionary of the council;
- c) disclosing any privileged or confidential information; or
- d) doing or not doing anything within that staff member's powers or duties

7.3 MANAGING TIME SHARING

7.3.1 PUBLIC SERVICE ACT

Section 30 of the Public Service Act stipulates that:

- (1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department.
- (2) For the purposes of subsection (1) the executing authority shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee's functions in the department or

constitute a contravention of the code of conduct contemplated in section 41 (1) (b) (v).

- (3) (a) The executive authority shall decide whether or not to grant permission, contemplated in subsection (1), within 30 days after the receipt of the request from the employee in question.
- (b) If the executive authority fails to make a decision within the 30 day period, it would be deemed that such permission was given.

7.4 MANAGING CORRUPTION

7.4.1 PUBLIC SERVICE ANTI-CORRUPTION STRATEGY

In 2002, Cabinet approved the Public Service Anti- corruption Strategy to be implemented over a period of five years. The Strategy contains nine strategic considerations that are inter-related and mutually supportive. These are:

1. Review and consolidation of the legislative framework;
2. Increased institutional capacity;
3. Improved access to report wrongdoing and protection of whistleblowers and witnesses;
4. Prohibition of corrupt individuals and businesses;
5. Improved management policies and practices;
6. Managing professional ethics;
7. Partnership with stakeholders;
8. Social analysis, research and policy advocacy; and
9. Awareness training and education.

Following the approval of the Strategy, Cabinet also approved the establishment of the Anti-corruption Coordinating Committee (ACCC) to coordinate and oversee the implementation of the Strategy. In addition, the Minimum Anti-corruption Capacity Requirements were established to support the implementation of the Strategy.

7.4.2 LOCAL GOVERNMENT ANTI-CORRUPTION STRATEGY

In 2006, the Department for Cooperative Governance and Traditional Affairs rolled out the

Local Government Anti-corruption Strategy. The Strategy is aligned to the Public Service Anti-corruption Strategy and is based on the following principles:

- a) Creating a culture within municipalities which is intolerant to unethical conduct, fraud and corruption;
- b) Strengthening community participation in the fight against corruption in municipalities;
- c) Strengthening relationships with key stakeholders, e.g. SALGA, employee representative unions and communities, that are necessary to support the actions required to fight corruption in municipalities;
- d) Deterrence of unethical conduct, fraud and corruption;
- e) Preventing unethical conduct, fraud and corruption which cannot be deterred;
- f) Detection of unethical conduct, fraud and corruption;
- g) Investigating detected unethical conduct, fraud and corruption;
- h) Taking appropriate action in the event of such irregularities, e.g. disciplinary action, recovery of losses, prosecution, etc; and
- i) Applying sanctions, which include redress in respect of financial losses.

The objectives of the Strategy are:

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

7.4.3 CORRUPTION ACT NO 94 OF 1992

The objective of the repealed Corruption Act, 1992 was to provide anew for the criminalisation of corruption and for matters connected therewith. The Act prohibited offering or acceptance of benefits.

7.4.4 PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT NO 12 OF 2004

In 2004, Parliament passed the Prevention and Combating of Corrupt Activities Act, 2004 with the object to:

- a) provide for the strengthening of measures to prevent and combat corruption and corrupt activities;
- b) provide for the offence of corruption and offences relating to corrupt activities;
- c) provide for investigating measures in respect of corruption and related corrupt activities;
- d) provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts
- e) place a duty on certain persons holding a position of authority to report certain corrupt transactions;
- f) provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities, and
- g) provide for matters connected therewith.

7.5 PUBLIC INTEREST MANAGEMENT

7.5.1 PROTECTED DISCLOSURES ACT NO 26 OF 2000

The objectives of this Act are-

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

7.5.2 PROMOTION OF ADMINISTRATIVE JUSTICE ACT NO 3 OF 2000

The objectives of the Act are:

- a) to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996; and to provide for matters incidental thereto;
- b) to promote an efficient administration and good governance; and
- c) to create a culture of accountability, openness and transparency in the public administration or in the exercise of a public power of the performance of a public function, by giving effect to the right to just administrative action.

7.5.3 PROMOTION OF ACCESS TO INFORMATION ACT NO 2 OF 2000

The objectives of the Act are-

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

3. to effectively scrutinize, and participate in, decision-making by public bodies that effects their rights.

7.5.4 PUBLIC FINANCE MANAGEMENT ACT NO 1 OF 1999 (PFMA)

Purpose

- a) To regulate financial management in the national government and provincial governments;
- b) To ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively;
- c) To provide for the responsibilities of persons entrusted with financial management in those governments; and
- d) To provide for matters connected therewith.

The Act provides for the establishment of an accounting officer for a department, trading entity or constitutional institution responsible for:

(1) ensuring that that department, trading entity or constitutional institution has and maintains -

- a) effective, efficient and transparent systems of financial and risk management and internal control;
- b) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77 of the PFMA;
- c) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
- d) a system for properly evaluating all major capital projects prior to a final decision on the project.

(2) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;

(3) is responsible for the management, including the safeguarding and the maintenance of assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;

(4) on discovery of any unauthorized, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;

- (5) must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who contravenes or fails to comply with the Act;
- (6) must comply, and ensure compliance by the department, trading entity or constitutional institution to any liability for which money has not been appropriated.

An official in a department, trading entity or constitutional institution are responsible for:

- a) ensuring that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;
- b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;
- c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorized expenditure, irregular expenditure and fruitless and wasteful expenditure and any under of collection due;
- d) must comply with the provisions of the PFMA to the extent applicable to that official, including any delegations and instructions in terms of section 44 of the PFMA; and
- e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

7.5.5 TREASURY REGULATIONS ISSUES IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999

The regulations stipulate that:

1. The accounting officer or accounting authority of an institution to which these regulations apply must ensure that officials implementing the institution's supply chain management system are trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by the National Treasury.
2. An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system must immediately report the breach or failure to the accounting officer or authority, in writing.

All role players to comply to ethical standards

- (1) All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote -

- (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in fair and reasonable manner.
- (2) The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.
- (3) A supply chain management official or other role player –
- (a) must recognize and disclose any conflict of interest that may arise;
 - (b) must treat all suppliers and potential suppliers equitably;
 - (c) may not use their position for private gain or to improperly benefit another person;
 - (d) must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;
 - (e) must be scrupulous in their use of public property; and
 - (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.
- (4) If a supply chain management official or other role player, or any close family member, partner or associate of such official or other role player has any private or business interest in any contract to be awarded, that official or other role player must –
- (a) disclose that interest; and
 - (b) withdraw from participating in any manner whatsoever in the process relating to that contract.

7.5.6 LOCAL GOVERNMENT: MUNICIPAL FINANCIAL MANAGEMENT ACT NO 56 OF 2003

The objectives of the Act are to:

- a) secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government;
- b) establish treasury norms and standards for the local sphere of government; and
- c) provide for matters connected therewith.

7.5.7 MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS

On prohibition of awards to persons in the service of the state, the Municipal Supply Chain Management Regulations stipulate that:

1. The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality entity may not make any award to a person –
 - a) Who is in the service of the state;
 - b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - c) Who is an advisor or consultant contracted with the municipality or municipal entity.

Regarding awards to close family members of persons in the service of the state, the Municipal Supply Chain Management Regulations stipulate that:

2. The notes to the annual financial statement of a municipality or municipal entity must disclose particulars of any award of more than R2 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including:
 - a) The name of that person;
 - b) The capacity in which that person is in the service of the state; and
 - c) The amount of the award
3. The Regulations also stipulate that the supply chain management policy must establish a code of ethical standards for officials and other role players in the supply chain management system in order to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.
4. In addition, the Code of Ethical Standards must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including:
 - a) Any alleged fraud, corruption, favouritism or unfair conduct;
 - b) Any alleged contravention of regulation 47 (1); or
 - c) Any alleged breach of the code of ethical standards.
5. With regard to inducements, rewards, gifts and favours to municipalities, municipal entities,

officials and other role players, the Municipal Supply Chain Management Regulations stipulate that:

- a) No person who is a provider or prospective provider of goods or services to a municipality or municipal entity, or a recipient or prospective recipient of goods disposed or to be disposed of by a municipality or municipal entity, may either directly or through a representative or intermediary promise, offer or grant –

Any inducement or reward to the municipality or municipal entity for or in connection with the award of a contract, or

Any reward, gift, favour or hospitality to –

1. Any official of the municipality or municipal entity; or
2. Any other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity.

7.5.8 FINANCIAL INTELLIGENCE CENTRE ACT NO 38 OF 2001

- a) The objectives of the Act are to:
 - a. establish a Financial Intelligence Center and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities;
 - b. impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities;
 - c. amend the Prevention of Organised Crime Act of 1998 and the Promotion of Access to Information Act of 2000; and provide for matter connected therewith.

7.6 COMPLIANCE WITH INTERNATIONAL ANTI-CORRUPTION INSTRUMENTS

7.6.1 SADC PROTOCOL AGAINST CORRUPTION

In terms of Article 4 of the SADC Protocol, the following preventative measures are made aimed at creating, maintaining and strengthening:

- a) Standards of conduct for the correct, honourable and proper fulfillment of public functions as well as mechanism to enforce those standards;
- b) Systems of government hiring and procurement of goods and services that ensure the transparency, equity and efficiency of such systems;
- c) Mechanisms to promote access to information and facilitate eradication and

- elimination of opportunities of corruption;
- d) Systems for protecting individuals who, in good faith, report acts of corruption;
- e) Institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption; and
- f) Mechanisms for promoting public education and awareness in the fight against corruption.

7.6.2 AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

In terms of Article 7 of the AU Convention, the following commitments are made with regard to the fight against corruption and related offences in the public service:

- a) Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service;
- b) Create an internal committee or a similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters on ethics;
- c) Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard; and
- d) Ensure transparency, equity and efficiency in the management of tendering and hiring procedures in the public service

7.6.3 UNITED NATIONS CONVENTION AGAINST CORRUPTION

In terms of Article 8 of the Convention, the following provisions are made with regard to code of conduct for public officials:

- a) In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system
- b) In particular, each State Party shall endeavor to apply, within its own institutional and legal system, codes or standards of conduct for the correct, honourable and proper performance of public functions;
- c) Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities,

when such acts come o their notice in the performance of their function

- d) Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measure and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and
- e) Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

7.6.4 THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND ITS RECOMMENDATIONS

In terms of Article 8 of the Convention, the following provisions are made:

- a. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identifies transactions, the recording of non- existent expenditure, the entry of liabilities with incorrect identification of other object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery; and
- b. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Recommendations of the Council for further combating bribery of foreign public officials in international business transactions on internal controls, ethics, and compliance stipulates that Member countries should encourage:

- a) Companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery.

8 Implementation Plan

Proposed Additional Measure	Short-Term 2011-2012	Medium Term 2012-2013	Long Term 2013-2014
6.1 Acceptance of gifts	Amendment of Chapter 3 of the Public Service Regulations sector specific legislation for public service and local government legislation Development of Implementation guidelines	Conduct Advocacy campaign	
6.2 Performance of Remunerative Work the Public outside Service	Development of implementation guidelines	Conduct advocacy campaigns	
6.3 Financial Disclosure Framework	Amendment of Chapter 3 of the Public Service Regulations Amendment of the Disclosure Form Introduction of the Financial Disclosure System for local government Designation of ethics officers	Migration to electronic filing Monitoring, evaluation and reporting	
6.4 Post-public employment	Amendments to Public Service Act, sector specific legislation for public service and local government legislation to enable this.	Introduction of cooling off measures	

Proposed Additional Measure	Short-Term 2011-2012	Medium Term 2012-2013	Long Term 2013-2014
6.5 Strengthening Capacity: Implementation of the Anti-corruption Capacity Building Programme	<p>Codification of the Minimum Anti-corruption Requirements into Public Service Regulation</p> <p>Training of general employees</p> <p>Development of training material for anti-corruption practitioners and investigators</p>	<p>Training of anti-corruption practitioner and investigators</p> <p>Roll-out of the Induction Programme</p>	
<p>Induction Programme for Public Servants</p> <p>Training for Ethics Officers</p>	<p>Roll-out of the Induction Programme</p> <p>Development of Training material for ethics officers</p>		
6.6 Monitoring and Evaluation	Roll-out of the pilot phase for the IFMS	Incorporation of the electronic system in departments to capture electronic disclosure forms	

Proposed Additional Measure	Short-Term 2011-2012	Medium Term 2012-2013	Long Term 2013-2014
6.7 Enforcement	<p>Issue compliance circulars in terms of legislative prescripts</p> <p>Development of guidelines regarding disciplinary processes and sanctions for corruption cases</p> <p>Establishment of the Special Anti-corruption Unit as a government component</p>	<p>Conduct investigations on corruption cases</p> <p>Coordinate disciplinary processes in the public service</p> <p>Manage the centralised data on corruption cases (IFMS)</p>	



