



MAKHADO LOCAL MUNICIPALITY

FRAUD RESPONSE PLAN, 2014

(Council Resolution A.145.14.10.14)

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1. Introduction

MLM is committed to the highest possible standards of openness, probity and accountability in all its affairs. It is determined to maintain a culture of honesty with zero tolerance to fraud and/or corruption.

This Fraud Response Plan (*"the response plan"*) is designed to facilitate a co-ordinated and consistent approach in MLM's response to incidents of fraud, theft, corruption and/or misconduct. For this reason, the terms thereof are mandatory.

2. Implementation

This plan is to be implemented in every instance of suspected or actual fraud, theft and/or corruption and is effective immediately.

3. Reporting obligations

Reporting should occur when reasonable grounds exist to believe that fraud, theft, corruption and/or misconduct is taking place, has already taken place, or is alleged to have taken place, either on the part of employees of MLM, service providers or contractors of MLM.

4. Confidentiality

MLM will do its best to protect the identity of an individual who wishes to report a suspicion or actual fraud, but prefers to remain anonymous.

Suspicious expressed anonymously are much more difficult to investigate. Anonymous allegations will nevertheless be considered, with consideration of factors such as the credibility of the suspicion and the likelihood of confirming the allegation from other reliable sources.

5. Protected disclosures

MLM recognizes the possibility of fear of reprisal on the part of an individual who wishes to report a concern. However, MLM will not tolerate harassment or victimization of whistleblowers. An investigation into such actions will immediately institute.

Action will be taken to protect those who raise a suspicion in good faith. However, disciplinary action will be considered if an allegation is made frivolously, in bad faith, maliciously or for personal gain.

6. Preliminary evaluation of suspicions and/or allegations

In order to determine if a matter justifies further investigation, the initial complaint should be evaluated with reference to, *inter alia*, the following:

- The credibility and the context in which allegations are made, or suspicions reported;
- The quality and accuracy of initial evidence provided; and
- Other readily available potential sources of information such as financial data.

If it is decided not to investigate, such decision should be recorded in writing together with the reasons for the decision.

7. Investigation - Considerations for external involvement

The decision on whether the investigation should be conducted by MLM's employees, external specialists, the South African Police Service ("SAPS") or a combination of these, should be taken with consideration of, *inter alia*, the following factors:

- Is there a possibility that the matter will be reported to SAPS?
- The relevant MLM insurance policy, that is, do the terms thereof prescribe external involvement, alternatively, that the matter be reported to the SAPS in order to facilitate a valid claim?
- The sensitivity of the matter to be investigated;
- The seniority of staff to be investigated;
- The seniority of staff to be interviewed;
- The need to preserve legal privilege?
- Will the involvement of an external party encourage more open and honest responses from potential witnesses to the alleged fraud and/or corruption?
- In-house investigative skills with reference to the seriousness and complexity of the matter to be investigated; and
- The complexity of the matter to be investigated. Is there a need to leverage specialist resources, such as in the event of digital evidence recovery, handwriting experts, fingerprint experts and private investigators?

7.1 Factors to consider before an external specialist is appointed

Factors that should be considered before an external specialist is appointed include the following:

- Reputation and integrity;
- Capability and track record;
- Potential conflict of interest;
- Monitoring and supervision during the engagement; and
- Contractual arrangements, including scope of work, deliverables and fees.

7.2 Digital evidence recovery

Digital evidence recovery can be defined as the process of identifying and preserving digital evidence in a manner that is admissible in legal proceedings.

Cognisance should be taken of how investigations may develop and consideration should be given how to best protect evidential integrity of electronic evidence in the event that this process may be subject to review in future, such as in civil and/or criminal actions.

In circumstances where computers or other electronic media are considered as potential sources of evidence, the investigator should seek the advice and/or assistance of suitably qualified professionals (such as Forensic Technology Specialists), before executing this portion of evidence gathering.

In the event of a Forensic Technology specialist being appointed, care should be taken to ensure that the objective of the procedure is met, that is to identify and acquire all electronic evidence that may be relevant to the investigation. For this purpose, the Forensic Technology specialist should be briefed, amongst others on the following:

- Background to the case and any allegations made;
- Individuals involved or suspected involvement;
- Purpose of the investigation;
- Date ranges;
- Parties with relevant knowledge of the issues;
- Privacy issues that may impact on what data can be examined and or seized;
- The authority under which the electronic evidence is to be acquired, for example by consent, under the order of a court, in which event a copy of such order should be provided;
- Nature and extent of MLM's business in order to provide the specialist with an understanding of the records that may be available;
- The nature of MLM's IT environment; and
- Any other information that may assist in defining the scope of digital evidence recovery procedure and ensuring the success thereof.

Clarity should be obtained from the Forensic Technology specialist on the subsequent security and integrity of the evidence recovered.

7.3 Handwriting expert

The assistance of a handwriting expert will be considered, for example, when it is necessary to determine whether particular handwriting is authentic, or when it is necessary to identify/verify the author of a particular document by identifying signatures, initials, hand printing and numbers on documentation relevant to the investigation.

7.4 Fingerprint expert

The assistance of a fingerprint expert will be considered, for example when it is necessary to identifying fingerprints on documents to help identify or eliminate the person who handled a particular document or object.

7.5 Private investigators

The services of private investigators may be considered, for example, where a need is identified to perform background checks on individuals and/or entities or to conduct surveillance operations.

8. In-house investigation

If the decision is taken that the matter be investigated internally, the following considerations are relevant:

- Investigations should be conducted by impartial employees who have no vested interest in the outcome of the case;
- Objectivity and independence of investigations are considered to be paramount;
- Any potential conflicts of interest that might compromise impartiality or independence should be raised and resolved at this stage;
- In the case of potential conflicts of interest between persons within any particular function, a person of the same or higher seniority (in terms of work level) of another function or department should investigate the matter; and
- The appropriate investigatory skills and experience of employees.

9. Investigation

All investigations performed and evidence obtained must occur in accordance with acceptable practices and legal requirements.

All investigations will be conducted objectively and independently, that is, the investigator must:

- Be free from management and any other party interference with the investigation, including procedures performed during the course thereof; and
- Have access to all records, information and relevant staff, as well as active co-operation from management during the investigation.

Every investigation must be concluded by the issuing of an objective and independent report by the person/entity appointed to conduct such investigation. The investigator will be free from any obligation to change the content or impact of the reported facts and also free from pressure to exclude relevant issues from the report.

Such reports will only be distributed to those parties required to have access thereto in order to implement whatever action is deemed appropriate as a result of the investigation.

10. Mitigating further loss

Priority should be given to any steps that need to be taken to prevent real or perceived risk.

Amongst others, consideration should be given to the following:

- Suspension of the employee(s) pending completion of any investigation;
- Security measures such as computer/network access passwords and remote access;
- Limitation or prevention of physical access (including out of hours access) to property of MLM;
- Recovery of documents and other resources or equipment from suspects;
- Liaison with financial institutions to prevent access to funds in relevant accounts; and
- Freeze or seize assets from suspects.

11. Internal liaison

Prior to, during and subsequent to an investigation regular contact between the investigator and other Makhado Local Municipality sections such as Human Resources, Legal, Internal Audit and Risk Management, are necessary.

11.1 Human Resources

The role of Human Resources includes:

- Liaison with labour unions, where relevant;
- Ensuring that the appropriate disciplinary action is instituted as a result of an investigation;
- Administering discipline, where appropriate, equitably to those involved in the fraud and/or misconduct;
- Monitor disciplinary sanctions and reporting seemingly inappropriate sanctions;
- Ensuring uniformity and consistent application of discipline regardless of rank, tenure, or job function;
- Monitoring potential retaliation against whistleblowers;

- Holding managers accountable for the misconduct of their subordinates, that is, in those instances where managers knew, or should have known, that fraud and/or misconduct might be occurring, or when they:
 - Directed or pressured others to violate Municipal standards to meet business objectives or set unrealistic goals that had the same effect;
 - Failed to ensure that employees received adequate training or resources;
 - Failed to set a positive example of acting with integrity or had a prior history of missing or permitting violations; and/or
 - Retaliated against others for reporting concerns.

11.2 Internal Audit

Internal Audit may be involved, as matters may be identified by them as part of their audit procedures.

Other roles of Internal Audit include, but are not limited to:

- Examining root causes of the control breakdown to determine if similar exposure remains elsewhere in MLM; and
- Assist in strengthening controls to help prevent and detect similar instances of fraud and/or misconduct in future and to prevent and detect such incidents in other units/departments.

11.3 Public Relations

It is vital to manage or monitor the media response in order to maintain a consistent stance. Communications Manager should therefore be informed of any cases that have the potential of attracting media attention.

All staff should be made aware that enquiries from the press should be referred to Communications Manager.

11.4 Legal/Insurers

Against the background of MLM' policy to seek maximum compensation from insurers and/or the perpetrator causing the loss, the legal division or alternatively the Municipal Manager should be informed of all losses or potential losses.

Relevant insurance policies should be considered in every instance to ensure compliance with the terms thereof, for example:

- The time at which the insurers should be advised of a claim/potential claim;
- Do insurers have the right to demand that the SAPS investigate or that the matter is reported to the police in order to facilitate a valid claim; and
- The prescribed nature and format of the claim.

In order to ensure that a valid insurance claim can be submitted, the investigator must maintain close ongoing contact with the Legal division, where applicable.

11.5 Legal

In addition to any insurance claim, the Legal division must consider recovering any losses as required by section 32 of the Municipal Finance Management Act 56 of 2003 (Stipulated in section 1.14) via alternative means, such as:

- Recovering the loss from any monies due to the individual on termination if the perpetrator is an employee, including the individual's accrued benefits in MLM's Pension Fund/Scheme;
- If the individual will not voluntarily make good the loss, consideration should be given to taking civil action to recover the loss;
- Asset forfeiture procedures; or
- In the event of criminal proceedings, an application for an order in terms of section 300 of the Criminal Procedure Act No 51 of 1977.

It is also the responsibility of the Legal division to ensure, where applicable, that compliance with the terms of section 34 of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 which determines as follows:

"Duty to report corrupt transactions.-

(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed –

- (a) An offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) or Chapter 2; or
- (b) The offence of theft, fraud, extortion, forgery or uttering a forged document, Involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

(2) Subject to the provisions of section 37(2), any person who fails to comply with subsection (1), is guilty of an offence.

(4) For purposes of subsection (1) the following persons hold a position of authority, namely –

.....

(b) *in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);*

(c) *any public officer in the Senior Management Service of a public body;*

Section 26 of the aforesaid Act provides for a penalty, in the event of a conviction, of a fine or imprisonment for a period of up to 10 years.

11.6 Accounting Officer

All fraud losses must be reported to the Municipal Manager immediately in order to be recorded and reported as "Fruitless and Wasteful expenditure" in line with the requirements of section 32 of the Municipal Finance Management Act 53 of 2003.

These requirements are stipulated as follows:

"(4) The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of—

- (a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;
- (b) Whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and

- (c) the steps that have been taken—
 - (i) to recover or rectify such expenditure; and
 - (ii) to prevent a recurrence of such expenditure.

(5) The writing off in terms of subsection (2) of any unauthorised, irregular or fruitless and wasteful expenditure as irrecoverable is no excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or a breach of this Act relating to such unauthorised, irregular or fruitless and wasteful expenditure.

- (6) The accounting officer must report to the South African Police Service all cases of alleged—
- (a) irregular expenditure that constitute a criminal offence; and
 - (b) theft and fraud that occurred in the municipality.

(7) The council of a municipality must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service if—

- (a) the charge is against the accounting officer; or
- (b) the accounting officer fails to comply with that subsection.

(8) The Minister, acting with the concurrence of the Cabinet member responsible for local government, may regulate the application of this section by regulation in terms of section 168.”

12. Case management

Makhado Local Municipality will maintain a fraud and/or corruption reporting system to enable the Council and Municipal Manager to:

- Fulfill its corporate governance responsibilities;
- Appraise itself as well as senior management of the full impact of fraud and/or corruption; and
- Identify trends of suspicious activity or areas of particular risk.

This system is *inter alia*, utilised to record suspicion/incident reporting, case registration, case monitoring, and investigation results in a uniform manner.

13. Recoveries and liabilities

Recoveries should be made in line with the requirements of Section 32 of the Municipal Finance Act 53 of 2003, as follows:

“32. *Unauthorised, irregular or fruitless and wasteful expenditure.—(1) without limiting liability in terms of the common law or other legislation—*

- (a) A political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;
- (b) The accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
- (c) Any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or
- (d) Any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure—

(a) In the case of unauthorised expenditure, is—

(i) Authorised in an adjustments budget; or

(ii) Certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and

(b) In the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

(3) If the accounting officer becomes aware that the council, the mayor or the executive committee of the municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.”

14. Retrospection

To ensure that effective follow-up corrective measures are taken, it is necessary to reflect on the facts and circumstances of every incident of fraud and/or misconduct. Matters suggested for consideration by relevant departments are set out below.

14.1 Human Resources

- Are the existing policies/procedures/standards sufficiently comprehensive and clear?
- Did the individuals involved understand and know how to fulfill their responsibilities? and
- Is it necessary to update or revise training programs?

14.2 Internal Audit

- Is there a need to re-assess the adequacy of the current internal control environment to consider the need for improvements? and
- What mitigating actions can be shared across the different departments of Makhado Local Municipality?

14.3 Public Relations

- Is there a need to communicate to the wider employee population that management took appropriate action to a particular incident of fraud and/or corruption? This decision must be taken in consultation with Risk Management and Legal? and
- Subject to legal constraints, individuals who reported the alleged fraud and/or corruption must be assured that the matter has been properly addressed, e.g. by providing them with information on the outcome of the investigation.

14.4 Legal and risk management

- Are existing insurance policies sufficient to cover similar instances in future?
- Are the fraud risk assessment processes and fraud risk controls effective with reference to the factors which enabled the fraud and/or misconduct to occur?
- Is there a need to raise awareness of fraud and/or corruption?

- Is there a need to raise awareness of fraud and/or misconduct reporting mechanisms? and
- Is there a need to give fraud risk and the management thereof a higher profile, that is, at management or senior management level?
- Is the fraud risk register updated?

14.5 Legal

- Is there a need of alerting relevant management across MLM of service providers, contractors and individuals involved in a particular incident of fraud and/or corruption? What are the legal implications of such action? and
- Is there a need to maintain a list of service providers and contractors who have committed fraud in their dealings with MLM? What are the legal implications of such action?

15. Implementation of the Plan

The plan will be communicated throughout the municipality during monthly departmental meetings. The plan will also be posted on the Municipal Intranet and the Website.

16. Approval of the Plan

The approval of this Plan rest with the municipal council with recommendation of the Accounting Officer and Risk Management Committee

17. Plan Review

This Fraud Response Plan will be reviewed annually/as an when need arise and submitted to the Council for approval.

Recommended by the Risk Management Committee Chairperson:

Name: _____

Signature: _____

Date: _____

Approved by the Accounting Officer:

Name: _____

Signature: _____

Date: _____