



**Zululand**  
District Municipality

## **FRAUD PREVENTION POLICY**

**2022/2023**

**"Service Delivery through Integrity"**

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## **1. Policy on fraud prevention**

### **1.1 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.

### **1.2 Scope of the policy**

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

### **1.3 Policy**

It is the policy of the 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 municipality 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 Municipality.

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 use of National Anti-Corruption Hotline number **0800 701 701**.

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.

#### **1.4 Statement of policy to fraud / Fraud policy stance**

Fraud represents a significant potential risk to the municipality's assets, service delivery efficiency, reputation, and financial well-being. The Municipality has a zero tolerate attitude to corruption or fraudulent activities, whether internal or external to the Municipality, and will vigorously pursue and prosecute any parties, by all legal means available, which engage in such practices or attempt to do so.

#### **1.5 Actions constituting fraud and corruption**

Fraud and corruption manifests in several ways and varying degrees of intensity. Fraud can either be actual or alleged (suspected).

Actual fraud means knowing and intentional misrepresentation with respect to a representation or warranty in an agreement, that was made with the intention to deceive or mislead another person, upon which such other person reasonably relied whereas alleged fraud means fraud that has been stated but has not been proved to be true.

Fraudulent activities constitute, but are not limited to:

- Unauthorised private use of the Municipality's assets, including vehicles.
- Fraud e.g., falsifying travel and subsistence claims.
- Conspiring unfairly with others to obtain a tender.

- Abuse of privileged information e.g., disclosing proprietary information relating to a tender to outside parties.
- Accepting inappropriate gifts from suppliers.
- Nepotism e.g., employing family members or close friends.
- Operating a private business in working hours.
- Embezzlement e.g., Stealing equipment or supplies from work.
- Accepting bribes or favours to process requests.
- Bribery e.g., 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.
- Misappropriating fees received from customers and avoiding detection by not issuing receipts to those customers.
- Favouritism e.g., provision of services or resources according to personal affiliation of an employee.
- Non-disclosures of conflict of interest e.g., failure by an employee to act or to consciously fail to act on a matter where the employee has an interest or another person or entity that has some form of relationship with the employee has an interest.
- Extortion e.g., coercion of a person or entity to provide a benefit to an employee, or another person or an entity, in exchange for acting (or failing to act) in a particular manner and.
- Abuse of power e.g., the use by an employee of his or her vested authority to improperly benefit another employee, person, or entity (or using vested

authority to improperly discriminate against another employee, person, or entity).

## **2. 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.

### **2.1. Structural strategies**

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

#### **2.1.1. Responsibilities for fraud and corruption risk management**

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

##### *Accounting Officer*

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

### *Audit committee*

The role of the Audit Committee is to oversee the Municipality's approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties. The Internal Auditor shall be a compulsory member.

The Audit committee shall meet at least quarterly to discuss the following issues:

- Progress made in respect of implementing the Fraud Prevention Plan.
- Reports received by the Municipality regarding fraud and corruption incidents with the view to making any recommendations to the Accounting Officer.
- Reports on all investigations initiated and concluded; and
- All allegations received via the National Anti-Corruption Hotline number.

### *Disciplinary Board Committee*

Disciplinary Board Committee must investigate all matters of financial misconduct to establish if allegation is founded and make recommendation whether full investigation to the allegation is warranted. All allegations of financial misconduct that relates to fraud or corruption need to be reported by the Board and investigated accordingly.

Similarly, all allegations of fraud that relates to financial misconduct must be first referred to the Disciplinary Board Committee to deal with those in terms of Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

#### **2.1.2. An ethical culture**

The 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 a Municipality reflects the Municipality's ethical conduct. In this regard, the highest standards of ethics are required by employees when fulfilling their duties.

Good governance indicates that a 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 for the municipality

#### **2.1.3. Senior management commitment**

Senior management is to be committed to eradicating fraud and corruption and ensuring that the 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 Officer, will ensure that it does not become complacent in dealing with fraud and corruption and that it will ensure the 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.

#### **2.1.4. Assessment of fraud and corruption risk**

The Municipality, under the guidance of the Accounting Officer and the Internal Audit Unit, will conduct annual fraud and corruption risk assessments to identify potential fraud and corruption risk exposures to 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.

### **2.1.5. 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:

- Fraud Prevention Policy.
- Code of Conduct for employees.
- How to respond to fraud and corruption; and
- Manifestations of fraud and corruption in the workplace.

The Municipality has identified the individual that would be responsible for employee awareness and that will arrange and schedule awareness sessions throughout the year.

## **2.2. Operational strategies**

### **2.2.1. Internal controls**

Internal controls are the first line of defence against fraud and corruption. While internal controls may not fully protect the Municipality 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, daily; and
- Reconciliation of vote accounts, monthly.

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

### **2.2.2. Prevention strategies**

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

#### *Employee awareness*

Employee awareness of the 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 hostile to a would-be transgressor

#### *Pre-employment screening*

Pre-employment screening will be carried out for all appointments, and evidence of such screening will be maintained by the HR 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.

The 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 Human Resources 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 an employee, or the levels of screening outlined below.

Where an employee is promoted into a management position and has not been screened during 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.

*Recruitment procedures*

Recruitment will be conducted in accordance with the requisite recruitment procedure. It will be a transparent process and all appointments will be confirmed only after due recommendation. Any person, involved in any decision-making process, who may have a conflict of interest, must declare

such a conflict in writing to the HR Department and withdraw from any further procedures.

#### *Internal audit plan*

A robust Internal Audit plan, which focuses on the prevalent high Fraud and Corruption risks, serves as an effective preventative measure. The Internal Audit Department will compile such a plan on an annual basis, and such a plan will also include “surprise audits”.

#### *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 Municipality.

#### *Disclosure of interests*

All senior managers of the 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.

### **2.2.3. 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 at the Municipality will be responsible for developing detection strategies and will work closely with line management and the Internal Audit function for this purpose.

The Municipality will embark on several initiatives to detect fraud and corruption in the workplace.

### *Internal Audit*

Like the prevention strategies, a robust Internal Audit plan which focuses on the prevalent high 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:

- **Surprise audits:** Unplanned audits conducted on specific business processes throughout the year.
- **Post-transaction reviews:** A review of transactions after they have been processed and completed can be effective in identifying fraudulent or corrupt activity. In addition to the possibility of detecting fraudulent transactions, such a strategy can also have a significant fraud prevention effect as the threat of detection may be enough to deter a staff member who would otherwise be motivated to engage in fraud and corruption.
- **Forensic data analysis:** The Municipality's computer system is an important source of information on fraudulent and sometimes corrupt conduct. Software applications will be used during internal audits, surprise audits and post-transaction reviews to assist in detecting any possible fraud and corruption; and
- **Management accounting reporting review:** Using relatively straightforward techniques in analysing the Municipality'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 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.

The Municipality will implement a strategy to ensure appropriate management accounting report reviews are conducted.

#### *External audit*

The 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"*.

### **2.2.4. Response strategies**

#### *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 workplace. Those who often do "blow the whistle" end up being victimised and intimidated. For this reason, the Municipality will adopt a Whistle Blowing Policy setting out the detailed procedure which must be followed 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.

#### *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 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 Municipality 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 Municipality 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. The 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 the 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.

## **2.3. Maintenance strategies**

### **2.3.1. Review of the effectiveness of the Fraud Prevention Policy and Plan**

The Municipality will conduct an annual review of the Fraud Prevention Policy to determine the effectiveness thereof.

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 policy and prevention plan.

It is the governance responsibility of Risk Management Committee to review Fraud Prevention Policy and Prevention Plan.

## **3. Procedures for investigations**

The 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 Municipality, external consultants (e.g., external auditors or forensic accountants) may be used to aid the Municipality when a fraud is reported. The external consultant may be assisted by experienced personnel within the Municipality 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 Municipality personnel to conduct investigations.

#### **3.1.1. 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 Audit 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.

#### **3.1.2. 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.

### **3.1.3. Other matters**

The Accounting officer, in conjunction with the Chairman of the Audit committee, will provide the details of fraud / corruption or possible fraud / corruption to the Audit Committee.

In each instance where fraud is detected, the 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.

### **3.2. Reporting fraud to police and / or external parties**

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

- An employee of the Municipality.
- A client of the Municipality.
- A grant recipient of the Municipality; or
- A supplier to the 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.

### 3.3. Recovery and other remedies

The 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 the Municipality from such action.

Where it is considered appropriate that the matter is not reported to the police, the 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 the 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.

## 4. Approval of the Policy

The Risk Management Policy was adopted by the Council of Zululand District Municipality on 10<sup>th</sup> day of **November 2022** by way of a council resolution **ZDMC: 22/192**.

Signature of the Municipal Manager

RN Hlongwa: 

Date: 10 November 2022

## **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 municipalities” 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.