



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY



DRAFT FRAUD RESPONSE COMMITTEE TERMS OF REFERENCE

Revised

5 May 2015

FRAUD RESPONSE COMMITTEE

TERMS OF REFERENCE

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1 INTRODUCTION

- 1.1 Stellenbosch Municipality is committed to sound business conduct and therefore manages its business according to the Stellenbosch Municipality values and the Stellenbosch Municipality Business Principles, which require an ethical and transparent way of conducting business.
- 1.2 Pursuant to clause 1.1 sub VI of the Terms of Reference of the Audit Committee, the Audit Committee assists the Mayoral Committee in advising on and monitoring Stellenbosch Municipality's compliance with all primary and secondary legislation and all relevant codes of conduct relevant to fraud risk management.
- 1.3 These Terms of Reference of the Fraud Response Committee are defined and approved by the Audit Committee in compliance with the Policy, the Strategy and any other legislative requirements.

2 INTERPRETATION CLAUSE

The headings of the clauses in this TOR are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this TOR, nor any clause hereof, unless a contrary intention clearly appears: -

- 2.1 Words importing:-
 - 2.1.1 Any one gender include the other two genders;
 - 2.1.2 The singular include the plural and vice versa; and
 - 2.1.3 Natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:-

- 2.2.1 “AC” means the Audit Committee established in terms of Section 166 of the MFMA;
- 2.2.2 “Chairperson” means the Chairperson of the FRC, who is also the Chairperson of the Audit Committee;
- 2.2.3 “Corruption” means any conduct or behaviour where a person accepts, agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly or illegally. Such behaviour also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty, and is to be read with the definition provided for in the Strategy and any Law;
- 2.2.4 “Fraud” means the intentional, false representation or concealment of a material fact for the purpose of inducing another party to act upon it to his or her injury and the perpetrator achieving gain, and is to be read with the definition provided for in the Strategy and any Law;
- 2.2.5 “FRC” means the Fraud Response Committee;
- 2.2.6 “Irregularity” means any unlawful act or omission committed by any person responsible for the management of an entity, which has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity;
- 2.2.7 “Law” means the common law, Constitution of the Republic of South Africa, any applicable statutes, proclamation, regulation, rule, notice, judgment or order and any interpretation of any of them by any Court or applicable tribunal, and any applicable guidance, direction, code of practice or other determination to which the Municipality is bound;

- 2.2.8 “Legal Advisor” means either one of the two Senior Legal Advisors employed by the Municipality, as designated by the Municipal Manager to address a particular matter, or as appointed by the Chairperson, depending on the context;
- 2.2.9 “MFMA” means the Local Government: Municipal Finance Management Act 56 of 2003, including any regulations made in terms thereof and amendments thereto as enacted from time to time;
- 2.2.10 “Municipality” means the Stellenbosch Municipality, a local municipality established in terms of section 12 of the Structures Act;
- 2.2.11 “Municipal Manager” means the Municipal Manager of the Stellenbosch Municipality;
- 2.2.12 “Policy” means the Fraud and Corruption Policy as approved by Council on the 25th August 2011;
- 2.2.13 “Strategy” means the Anti-Corruption Strategy as approved by Council on the 9th December 2010, with amendments thereto as approved by Council from time to time;
- 2.2.14 “Structures Act” means the Local Government: Municipal Structures Act 117 of 1998, including any regulations made in terms thereof and amendments thereto as enacted from time to time;
- 2.2.15 “Systems Act” means the Local Government: Municipal Systems Act 32 of 2000, including any regulations made in terms thereof and amendments thereto as enacted from time to time;
- 2.2.16 “TOR” means these Terms of Reference, including all annexures and schedules hereto

- 2.2.17 “Top Management” means the Municipal Manager and any person appointed by the Municipality in terms of Section 56 of the Systems Act;
- 2.2.18 “Whistleblower” means a person who makes a protected disclosure as defined in the Protected Disclosures Act 26 of 2000 or any other similar Law applicable from time to time;
- 2.2.19 “CAE” means the Chief Audit Executive of the Stellenbosch Municipality;
- 2.2.20 “CRO” means the Chief Risk Officer of the Stellenbosch Municipality;
- 2.3 when any number of days is prescribed in this TOR, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.4 when figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.5 expressions defined in this TOR shall bear the same meanings in schedules or annexures to this TOR which do not themselves contain their own definitions; and
- 2.6 where any term is defined within the context of any particular clause in this TOR, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meanings ascribed to it for all purposes in terms of this TOR, notwithstanding that, that term has not been defined in this interpretation clause.

3 POWERS, FUNCTIONS AND DUTIES

- 3.1 Without prejudice to the responsibilities of each department and other relevant stakeholders, the FRC of Stellenbosch Municipality is appointed in terms of the Policy to:
- 3.1.1 Advise and assist in developing and implementing policies and procedures aimed at enhancing integrity and ethical behaviour and preventing fraud throughout Stellenbosch Municipality's operations and monitoring compliance thereof;
 - 3.1.2 Oversee and coordinate investigations based on reports of a Breach under the Stellenbosch Municipality Procedure on Whistleblowing or Fraud under the Stellenbosch Municipality Policy on Fraud Prevention;
 - 3.1.3 Advise and make recommendations to Audit Committee and/or Top Management, the Council, and the Mayoral Committee with regard to guidelines for disciplinary action and initiating criminal prosecution and/or civil action in the event of a breach under the Strategy or Policy, or other legislative requirements;
 - 3.1.4 Advise and make recommendations to the Audit Committee and/or Top Management, the Council, the Mayoral Committee with regard to the inclusion of the FRC in decisions concerning disciplinary and/or remedial action(s) to be taken when (serious) fraud cases and/or specific breaches of Stellenbosch Municipality policies, procedures and/or internal controls are identified against any statutory director and/or direct reports of the Council;
 - 3.1.5 Collect, analyse and report in an appropriate form, to an appropriate extent and to appropriate recipients, regarding all potentially serious Fraud and (whistleblower) investigations;
 - 3.1.6 Advise and make recommendations to the Audit Committee and/or Council and/or Top Management concerning the mitigation of the fraud risk and other

preventive measures to be taken, where necessary, after analysing the patterns of behaviour encountered after an investigation is performed;

- 3.1.7 Advise and make recommendations to Audit Committee and/or Top Management and the Council with regard to ethical and anti-corruption matters; and
- 3.1.8 Manage the appointment and relationship with any service providers appointed to render services relevant to the functions of the FRC, including but not limited to investigators, and the reporting mechanisms available to whistleblowers.
- 3.2 The Chairman of the FRC is responsible for the day to day management of the FRC's responsibilities and will have access to the resources of the department of the most appropriate Fraud Response Committee Member in consultation with that member.

4 ROLES AND RESPONSIBILITIES

4.1 Chairperson

- 4.1.1 The Chairperson shall submit a list of scheduled FRC meetings to be held for the remainder of the current calendar year, at the first meeting of the FRC for approval, and thereafter a similar schedule for the coming year at the last scheduled meeting of that calendar year.
- 4.1.2 The Chairperson shall be responsible for convening the FRC when required in addition to the scheduled meetings. Provided that any other member of the FRC may direct a written and motivated request to the Chairperson.
- 4.1.3 The Chairperson shall establish the procedures to be complied with at meetings in the event that these TOR do not make appropriate provision for same. The ruling of the Chairperson shall be final.

4.1.4 The Chairperson shall approve the agenda of each FRC meeting prior to its circulation to any other members.

4.1.5 The Chairperson shall be entitled to compile an agenda on the basis of urgency and/or extraordinary circumstances.

4.1.6 The Chairperson shall be responsible to address the queries of Council on matters addressed by the FRC.

4.2 **Additional Member of the Audit Committee**

4.2.1 The Additional Member of the Audit Committee shall provide the FRC and the Chairperson with any support and advisory in relation to their area of expertise, as required from time to time.

4.2.2 The Additional Member of the Audit Committee shall be responsible to address the queries of the Audit Committee on matters addressed by the FRC.

4.2.3 The Chairperson may delegate any of the responsibilities outlined above to the Additional Member of the Audit Committee, provided that the Chairperson remains responsible for ensuring its effective execution.

4.3 **Municipal Manager**

4.3.1 The Municipal Manager shall compile the agenda for each FRC meeting and submit same to the Chairperson at least 10 (ten) working days prior to a scheduled meeting of the FRC.

4.3.2 The Municipal Manager shall assume responsibility for all administrative requirements in relation to the distribution of the FRC agendas, minutes and any supporting documentation. Provided that the Municipal Manager may delegate same to the CRO or another suitably qualified municipal official who shall also be bound to retain confidentiality of all documents.

4.3.3 The Municipal Manager shall be responsible from an administrative perspective for executing the resolutions of the FRC and the appointment of service providers, including any matters that require financial approval from an administrative perspective.

4.3.4 The CRO shall provide a secretariat service to the committee.

4.4 **Legal Advisor**

4.4.1 The Legal Advisor as designated by the Municipal Manager to address a particular matter shall be required to furnish the FRC with an indication of applicable legislative and regulatory framework, as well as procedural advice.

4.4.2 The Legal Advisor shall be required to be available to assist any member of the FRC with legal advisory in relation to a matter that falls within the ambit of the functions of the FRC. Provided that the requirements placed on the Legal Advisor are not so voluminous so as to cause the neglect of his/her core functions.

4.4.3 Where it is required that more than one of the Municipality's Legal Advisor's are required to be present at a meeting of the FRC, the Chairperson shall be entitled to permit the Legal Advisor other than the one designated by the Municipal Manager on a particular matter, to address the FRC. Provided that any other member of the FRC may raise their objections for the Chairpersons consideration.

4.5 **Other**

4.5.1 The invitees, being the Chief Financial Officer and the Chief Audit Executive, shall be permitted to be present for only those items of the FRC meeting as deemed necessary by the Chairperson. Provided that any other member of the FRC may request the Chairperson to request the invitee's presence.

4.5.2 The Chairperson of the FRC may, when (s)he deems it appropriate, request that the Municipality provide a secretariat service that may include recording of the proceedings of the meeting of the FRC.

5 SERVICE PROVIDERS

5.1 The FRC shall be entitled to identify those goods and/or services that it requires to be procured in order to perform its functions effectively and efficiently, as well as those relevant to the functions, powers and duties of the FRC.

5.2 The FRC shall approve the technical specifications for the appointment of those suppliers and/or service providers who are required to supply such goods and/or render services.

5.3 The FRC shall be entitled to advise the Municipal Manager or other appropriate official as to the management of the relationship with such supplier and/or service provider, including but not limited to the following:

5.3.1 Aspects relating to quality and quantity of the goods and/or services;

5.3.2 Performance targets;

5.3.3 Reporting requirements;

6 INVESTIGATIONS

6.1 The FRC shall, upon approval of an investigation and appointment of an investigator, establish suitable terms of reference for each investigation conducted, including the scope, reporting requirements, timeframes, ___.

6.2 The FRC shall be entitled, only insofar as it will not hamper the conduct of the investigation, to impose any special conditions that will aid the effective conduct of an investigation.

6.3 The FRC shall be obliged to furnish the investigator with guidance and assistance. Provided that any administrative assistance required shall be submitted to the Municipal Manager who shall make suitable arrangements for the provision thereof.

7 COMPOSITION

7.1 In addition to the composition as outlined in the Policy, the FRC shall be entitled to invite other officials of Stellenbosch Municipality and external experts, as needed to advise on and assist with special cases and issues.

7.2 Any additional invitees shall be bound to observe the legislative and regulatory framework applicable to the FRC, as well as the terms hereof.

8 MEETINGS

8.1 The Committee shall meet at least once every 3 months (quarterly). Provided that in cases of urgency, meetings may be held **by telephone/via e-mail and/or video conference.**

8.2 Minutes of the Committee meetings shall be taken and filed after approval by the Committee. A copy will be sent to the members of the Committee. Provided that the minutes shall be deemed to be a confidential document that shall not be disclosed to any person without the prior written authority of the Chairperson in consultation with a Legal Advisor.

8.3 The Chairperson and the Municipal Manager will hold monthly meetings to review and discuss the status and progress of the investigations underway. Provided that in case of urgency, meetings may be held by telephone and/or video conference. Other members of the FRC may be invited to participate in these meetings when advisable.

9 REPORTING

- 9.1 The FRC shall be required to submit on a quarterly basis a report to the Audit Committee detailing the following:
 - 9.1.1 The number and type of matters addressed and the outcome thereof;
 - 9.1.2 The number of alleged fraudulent and corrupt activities reported, and without divulging the factual details thereof, providing an indication of the nature and severity of incidents, their consequences for Stellenbosch Municipality, measures taken to prevent reoccurrence, remedial and disciplinary actions taken and finally the general trends in the number and type of incidents;
 - 9.1.3 The number of investigations instituted and the progress, without divulging the factual details of any particular matter;
 - 9.1.4 Any policies or procedures being addressed by the FRC;
 - 9.1.5 Any other relevant matters.

- 9.2 The FRC shall submit reports on other relevant matters as and when requested by the Audit Committee.

10 CONFIDENTIALITY

- 10.1 All information made available to and used by the FRC shall be handled with due regard to its confidential nature and to the need to protect the interests and privacy of the individuals and/or organisations under investigation.

- 10.2 Members of the FRC, invitees, suppliers, service providers or any other person who provides assistance or advisory in any manner or form may divulge any document or information to any other person.

- 10.3 Any contravention of the duty of confidentiality shall be addressed in an appropriate manner by the Chairperson, who may refer same to the Audit Committee where necessary.

11 ANNUAL REVIEW AND ASSESSMENT

- 11.1 The Committee shall review and assess the adequacy of these Terms of Reference annually or more frequently if necessary and recommend changes as needed to the Council and the Mayco for review and approval.