Fraud Prevention Strategy
Inclusive of Policy, control strategies and procedures for investigations

Approved by:  Accounting Authority

Signed on behalf by (name and position):  ______________

Signed:  ______________

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1 Introduction

1.1 Purpose

The purpose of the document is to provide guidance to enable the Entity to present a fraud prevention strategy and policy.

1.2 Statement of attitude to fraud

Fraud represents a significant potential risk to the Eastern Cape Liquor Board's (Entity) assets, service delivery efficiency and reputation. The Entity will not tolerate corrupt or fraudulent activities, whether internal or external to the Entity, and will vigorously pursue and prosecute any parties, by all legal means available, which engage in such practices or attempt to do so.

1.3 The Public Service Anti-Corruption Strategy

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

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

1.4 Eastern Cape Liquor Board’s anti-fraud and corruption strategy and prevention plan

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

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

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

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

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

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

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

1.5.1 Forms of corruption

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

1.5.1.1 Bribery

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

Bribery involves a receipt in any form or amount without disclosure.
1.5.1.2 Embezzlement

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

1.5.1.3 Fraud

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

In addition, this involves the theft of any resources.

1.5.1.4 Extortion

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

1.5.1.5 Abuse of power

The use by 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).
1.5.1.6 Conflict of interest

The 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.

1.5.1.7 Abuse of privileged information

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

1.5.1.8 Favouritism

The provision of services or resources according to personal affiliation (for example cultural or religious) of an employee.

1.5.1.9 Nepotism

An employee ensuring that family members or friends are appointed to ECLB positions or that family members receive contracts from the ECLB, is regarded as nepotism.

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

2.1 Background

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

2.2 Scope of the policy

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

2.3 Policy

It is the policy of the Entity 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 Entity 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 Entity.

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

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.

All employees are responsible for reporting instances of fraud and corruption. Employees will be required to assist in the investigation of fraud where applicable.

2.4 Actions constituting fraud and corruption

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

- Unauthorised private use of the Entity’s assets, including vehicles;
- Falsifying travel and subsistence claims;
- Conspiring unfairly with others to obtain a tender;
- Disclosing proprietary information relating to a tender to outside parties;
- Accepting inappropriate gifts from suppliers;
- Employing family members or close friends that have not gone through the correct procedures and process as would a person who was unrelated;
• Operating a private business in working hours;

• Stealing equipment or supplies from work;

• Accepting bribes or favours to process requests;

• Accepting bribes or favours for turning a blind eye to a service provider or liquor provider who does not provide an appropriate service or comply with the requirements of the Eastern Cape Liquor Act, Act no. 10 of 2003;

• Submitting or processing false invoices from contractors or other service providers; and

• Misappropriating fees received from customers, and avoiding detection by not issuing receipts to those customers.

The ECLB believes that the following are specific high risk areas to the entity: -

• Application for licenses. The risk is to both the public initiating the fraud as well as the employees at the Entity.

• Inspections. The risk that the liquor outlets do not comply, as well as the risk that the Inspectors know about the illegal operation and don’t act.

• Pre- registration inspections. There is a risk that the inspectors do not go to the liquor outlets prior to the registration.

• Unauthorised use of movable assets.
• Supply chain management processes not followed.

• Use of stationary and supplies by employees for personal use.

• Disclosure of confidential information.

• Property management. Lack of care by all employees may result in loss to the ECLB.

• Abuse of time during working hours. In the form of telephone, internet and attendance.
3 Fraud and Corruption control strategies

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

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

3.1 Structural strategies

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

3.1.1 Responsibilities for fraud and corruption risk management

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

3.1.1.1 Accounting Authority

The Accounting Authority bears the ultimate responsibility for fraud and corruption risk management within the Entity. This includes the coordination of risk assessments, overseeing the investigation of suspected fraud and corruption, and facilitation for the reporting of such instances.
3.1.1.2 Risk Management Committee

The role of the Risk Management Committee is to oversee the Entity’s approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties. This committee is a sub-committee of the Audit Committee and will be chaired by one of the independent members of the Audit Committee. Each Division will have representation on this committee. The Internal Auditor shall be a compulsory member.

The Risk Management Committee shall meet at least once every three months to discuss the following issues:

- Progress made in respect of implementing the Anti-Fraud and Corruption Strategies and Fraud Prevention Plans;

- Reports received by the Entity regarding fraud and corruption incidents with the view to making any recommendations to the Accounting Authority and Chairperson of the Audit Committee;

- Reports on the risk action plan from Senior Management for review of areas of unacceptable levels of high risk.

- Reports on all investigations initiated and concluded; and

- All allegations received via the whistle blowing mechanisms (see Annexure A).
3.1.2 An ethical culture

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

Good governance indicates that Entity should develop standard codes of conduct (ethics) as part of their corporate governance frameworks. All employees are expected to abide by the Ethics and Code of Conduct of ECLB (available from the Human Resources Division) for the Entity.

3.1.3 Employees commitment

Employees is to be committed to eradicating fraud and corruption and ensuring that the Entity strives to be perceived as ethical in all its dealings with the public and other interested parties. In this regard, senior management, under the guidance of the Accounting Authority, will ensure that it does not become complacent in dealing with fraud and corruption and that it will ensure the Entity’s overall fraud and corruption strategy is reviewed and updated regularly. Furthermore, senior management will ensure that all employees and stakeholders are made aware of its overall anti-fraud and corruption strategies through various initiatives of awareness and training.
3.1.4 Assessment of fraud and corruption risk

The Entity, under the guidance of the Accounting Authority and the Chairperson of the Risk Management Committee, will conduct annual fraud and corruption risk assessments to identify potential fraud and corruption risk exposures to the Entity. This may be included in the normal risk assessment conducted by the Entity. This process will ensure that actions to address the identified fraud and corruption risk exposures will be implemented to mitigate these exposures.

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

3.1.5 Employee awareness

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

- Anti-Fraud and Corruption strategy;
- Ethics and Code of Conduct Policy (available from the Human Resources Division);
- Whistle blowing policy (Annexure A);
- How to respond to fraud and corruption; and
• Manifestations of fraud and corruption in the workplace.

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

New employees will be made aware of the fraud prevention strategy through their induction course.

3.2 Operational strategies

3.2.1 Internal controls

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

All areas of operations require internal controls, for example:

• Physical controls (securing of assets);

• Authorisation controls (approval of expenditure);

• Supervisory controls (supervising day-to-day issues);

• Analysis of data;

• Monthly and annual financial statements;

• Reconciliation of bank statements, monthly; and
• Reconciliation of general ledger accounts, monthly.

• Reconciliation of license applications and renewals.

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

3.2.2 Prevention strategies

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

3.2.2.1 Employee awareness

Employee awareness of the Entity’s Anti-Fraud and Corruption Strategy, Code of Conduct, Whistle blowing policy and the manifestation of fraud and corruption in the workplace all assist in the creation of an environment which may be considered to be hostile to a would-be transgressor.

3.2.2.2 Pre-employment screening

Pre-employment screening will be carried out for all appointments, and evidence of such screening will be maintained by the HR Division. The screening process for ECLB is as follows:

Reference checking is an essential part of the selection process. Reference checks will only be carried out for applicants recommended by an interviewing panel. The person performing the reference check (Human Resources official) shall obtain the following information during the course of the reference check:
1) Name and designation of the person.
2) A confirmation of the applicant’s employment history, including date of starting Service with the previous employer.
3) The applicant’s position; the job requirements and key performance areas of the applicant’s current position.
4) An assessment of the employee’s performance and conduct.
5) Any other relevant matters

Candidates may appoint their own referees, as long as the referees are credible and in a position to give justifiable and factual information. Only justifiable and job-related issues may be elicited and taken into consideration.

- References may only be checked by the Human Resources Manager or his/her designate.

In addition to the above the following must be considered: -

- Verification of identity.

- A consideration of any gaps in employment history and the reasons for those gaps.

- Verification of formal qualifications claimed.
3.2.2.3 Recruitment procedures

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

3.2.2.4 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 Division will compile such a plan on an annual basis, and such a plan will also include “surprise audits”.

3.2.2.5 Fraud and corruption prevention plan

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

3.2.2.6 Disclosure of interests

All employees and the accounting authority of the Entity will be required to disclose their direct and indirect business interests and specific assets on an annual basis. This register will be kept with the Accounting Authority.

Audit committee – business interests only. Annexure B – Declaration of interest policy.
3.2.3 Detection strategies

Detection of fraud and corruption may occur through:

- Vigilance on the part of employees, including line management;

- The Internal Audit function;

- Ad hoc management reviews;

- Anonymous reports; and

- The application of detection techniques.

The individual identified at the Entity will be responsible for developing detection strategies, and will work closely with line management and the Internal Audit function for this purpose.

The Entity will embark on a number of initiatives to detect fraud and corruption in the workplace.

3.2.3.1 Internal Audit

Similar to the prevention strategies, a robust 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 these should be approved by the Chief Executive Officer or Audit Committee;
• 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 Entity’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 Entity’s management accounting reports, trends can be examined and investigated which may be indicative of fraudulent conduct. Some examples of the types of management accounting reports that can be utilised on a compare and contrast basis are:

  - Budget reports for each division;

  - Reports comparing expenditure against public sector benchmarks; and

  - Reports highlighting unusual trends in bad or doubtful debts.
The Entity will implement a strategy to ensure appropriate management accounting report reviews are conducted.

3.2.3.2 External audit

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

3.2.4 Response strategies

3.2.4.1 Reporting fraud and corruption – a Whistle blowing policy

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

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

Dealing with suspected fraud and corruption

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

Investigations

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

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

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

Investigations may involve one or more of the following activities:

- Interviewing of relevant witnesses, internal and external, including obtaining statements where appropriate;
- Reviewing and collating documentary evidence;

- Forensic examination of computer systems;

- Examination of telephone records;

- Enquiries from banks and other financial Entity’s (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


Any investigation into improper conduct within the Entity 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 Entity 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 Entity 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 Entity, 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 division concerned.

3.3 Maintenance strategies

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

The Entity will conduct a review of the Anti-Fraud and Corruption Strategy and Prevention annually to determine the effectiveness thereof. The Accounting Authority is ultimately accountable for this review and may appoint a person to take responsibility for this.
3.3.2 Review and updating the Anti-Fraud and Corruption Strategy and Prevention Plan

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

The Entity 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 Entity, external consultants (e.g. internal auditors or forensic accountants) may be used to provide assistance to the Entity when a fraud is reported. The external consultant may be assisted by experienced personnel within the Entity who are sufficiently independent of the area or the matter under investigation. The Accounting Authority, within his / her delegated authority, will have the discretion to determine the appropriate external consultants and / or the Entity personnel to conduct investigations.
4.1.1 Handling a fraud allegation

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

The Accounting Authority will appoint an appropriate manager (usually within the Division 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 Chairperson of the Risk Management Committee on technical aspects of the investigation.

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

4.1.2 Documentation of the results of the investigation

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

4.1.3 Other matters

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

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

4.2 Reporting fraud to police and / or external parties

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

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

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 Authority in consultation with the investigator.
4.3 Recovery and other remedies

The Entity 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 Entity from such action.

Where it is considered appropriate that the matter not be reported to the police, the Entity 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 Entity for misconduct or fraud. This is necessary to ensure that factors contributing to misconduct and fraudulent activity by employees can be managed as a process to mitigate fraud risk.
A Regulatory Framework

A.1 Summary of statutory offences relating to dishonesty

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

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

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

- The provision of investigative resources;

- The establishment of a register relating to persons convicted of corrupt activities;

- Placing a duty on persons in a “position of authority” to report certain corrupt transactions; and

- Extraterritorial jurisdiction in respect of offences relating to corrupt activities.

As far as offences are concerned, the Act defines a general offence of corruption. In addition to the general offence, certain specific offences are defined relating to specific persons or specific corrupt activities.
The offences defined by the Act relate to the giving or receiving of a “gratification”. The term gratification is defined in the Act and includes a wide variety of tangible and intangible benefits such as money, gifts, status, employment, release of obligations, granting of rights or privileges and the granting of any valuable consideration such as discounts etc.

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

- The illegal or unauthorised performance of such other person’s powers, duties or functions;
- An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- The achievement of an unjustified result; or
- Any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corruption.
The Act defines specific offences relating to the following categories of persons:

- Public Officers;
- Foreign Public Officials;
- Agents;
- Members of Legislative Authorities;
- Judicial Officers; and
- Members of the Prosecuting Authority.

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

- Witnesses and evidential material in certain proceedings;
- Contracts;
- Procuring and withdrawal of tenders;
- Auctions;
- Sporting events; and
- Gambling games or games of chance.
Section 34 of the Act places a duty on any person in a position of authority to report a suspicion of certain corrupt or illegal activities to a police official. These include certain offences of corruption created under the Act as well as fraud, theft, extortion and forgery where the amount involved exceeds R100 000. Failure to report such suspicion constitutes an offence.

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

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

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

- The interest consists of shareholding in a listed company;
- The public officer’s conditions of employment do not prohibit him/her from acquiring such interests; or
- In the case of a tender process, the said officer’s conditions of employment do not prohibit him/her from acquiring such interests as long as the interests are acquired through an independent tender process.
A.1.2 Prevention of Organised Crime Act, 121 of 1998 (POCA)

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

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

Section 4 of the Act defines the “general” offence of money laundering and provides that a person who knows, or ought reasonably to have known, that property is, or forms part of the proceeds of unlawful activities, commits an offence if he commits an act in connection with that property which has the effect or is likely to have the effect of concealing the nature and source thereof.
Section 5 of the Act creates an offence if a person knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and provides assistance to such other person regarding the use or retention of such property.

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

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

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

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

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

FICA imposes certain reporting duties and compliance obligations.

The Act imposes compliance obligations on so-called “accountable Entit"ys” 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.
Annexure A: Whistle blowing policy

BACKGROUND

The Protected Disclosures Act, Act 26 of 2000, which became effective in February 2001, provides protection to employees for disclosures made without malice and in good faith, in defined circumstances.

Objects and application of the 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.

(2) This Act, applies to any protected disclosure made after the date on which this section comes into operation, irrespective of whether or not the impropriety concerned has occurred on or after the date.

(3) Any provision in a contract of employment or other agreement between an employer and an employee is void in so far as it: -

a. purports to exclude any provision of the Act, including an agreement to refrain from instituting or continuing any proceeding under this Act or any proceeding for breach of contract, or
b. (i) purports to preclude the employee; or (ii) has the effect of discouraging the employee from making a protected disclosure.

In terms of this Act, employees are therefore encouraged to blow the whistle on all irregularities and misconduct in the working environment without the fear of suffering on occupational detriment as defined by the Act.

The policy has therefore been written with a number of purposes in mind: -

- To explain what whistle-blowing actually means,
- To express the commitment of the ECLB in supporting employees who blow the whistle in the interest of protecting the public,
- To provide operational framework for dealing with cases of whistle-blowing,
- To identify some examples of whistle-blowing for practical guidance purposes, and
- Finally, to reassure employees that concerns will be dealt with seriously and investigated fully with appropriate action being taken when necessary.

POLICY STATEMENT

The ELCB recognises that employees are often the first to realise that something seriously wrong may be happening within the ECLB. However, they may not express their concerns for fear of being disloyal to their colleagues or because they fear harassment or victimisation. In such circumstances, it is normally easier to ignore the concern than to report what may be just a suspicion of malpractice.
The ECLB is committed to achieving the highest possible standards of service, openness, accountability and the highest possible ethical standards in all its practices. In line with that commitment, it encourages staff to raise matters of concern responsibility through the procedures aid down in this policy document. The ECLB recognises that certain cases will have to proceed on a confidential basis.

To endorse this commitment, the ECLB has designed procedures for dealing with cases of whistle-blowing that protect the individual and ensure that the matter is fully and vigorously investigated.

**PURPOSE AND SCOPE OF POLICY**

The purpose of this policy is to provide a means by which employees are able to raise concerns with the appropriate management, or specifically appointed persons within the ECLB, where they have responsible grounds for believing that there is fraud and corruption taking place.

The policy is designated to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within the ECLB. The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct.

The policy covers all genuine concerns raised including:

- Financial misconduct (e.g. theft, fraud, breach of contract, etc).

- Corruption and misconduct, and

- Attempts to suppress or conceal any information relating to any of the above. If in the course of investigation any concern raised in relation to the above matters appears to be the investigator to relate more appropriately to grievance or discipline, those procedures will be evoked.
WHAT IS WHISTLE-BLOWING?

The term whistle-blowing is generally used to describe the process of disclosing information relating to some kind of malpractice or mistreatment which members of staff may have come across during the course of their work and which they feel would put the interest of the public and ECLB at risk.

WHO IS A WHISTLEBLOWER?

Any member of staff who has a reasonable belief that there is corruption or misconduct relating to any of the matters specified above may raise a concern under the procedures as detailed.

For the purposes of this policy, an employee or member of staff is someone who is:

- Employed on a permanent basis,
- On a fixed term or temporary contract, and
- On secondment to ECLB.

Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true.

The issues raised may relate to a manager, another member of staff, and a group within staff, the employee’s own section or a different section within the ECLB. The perpetrator can be an outsider, employee, a manager, a customer or an ex-employee. This may include awareness of a system or procedures in use, which may cause the ECLB to transgress legal obligations.

CULTURE OF OPENNESS
The ECLB commits itself to encouraging a culture that promotes openness. This will be done by:

- Involving employees, listening to their concerns and encouraging the appropriate use of this policy/process on whistle-blowing promoted by Management. This policy will be issued to all existing employees and to each new employee.

- Educating/training/information/explaining to employees what constitutes fraud, corruption and malpractice and what its effect is on service delivery.

- Promoting professional ethics, the code of conduct and establishing a common understanding of what is acceptable and what is unacceptable behaviour.

- Having a policy to combat fraud.

**ECLB’S ASSURANCES TO EMPLOYEES**

**Employee safety**

ECLB is committed to this policy. ECLB will ensure that an employee who makes a disclosure in the abovementioned circumstances will not be penalised or suffer from occupational detriment for doing so.

Occupational detriment as defined by the Act includes being dismissed, suspended, demoted, transferred against his/her will, harassed or intimidated, refused a reference or being provided with an adverse reference, as a result of his/her disclosure.

If a concern is raised in good faith in terms of this policy, an employee will not be at risk of losing his/her job or suffering any form of retribution as a result.
This assurance is not extended to employees who maliciously raise matters they know to be untrue. Employees who do not act in good faith, who make an allegation without having reasonable grounds believing it to be substantially true, or who makes it maliciously or, may be subject to disciplinary proceedings.

Employee confidence

In view of the protection offered to an employee raising a bona fide concern, it is preferable that the individual puts his/her name to the disclosure. ECLB will not tolerate the harassment or victimisation of anyone raising a genuine concern.

However, an employee may nonetheless wish to raise a concern in confidence under this policy. If he/she wishes that his/her identify must not be divulged, it will not be disclosed without consent. However, management expects the same confidentiality regarding the matter from employees.

If the situation arises where the matter could not be resolved without revealing an employee’s identity (for example where his/her evidence is needed in court), it will be discussed with him/her on how and whether it can be proceeded with.

Accordingly, while anonymous reports will be considered, this policy is not appropriate for concerns raised anonymously.

HOW THE MATTER WILL BE HANDLED

Once a concern is raised, it will be assessed to decide what action should be taken. This may involve an internal inquiry or a more formal investigation.

The issue raised will be acknowledged within seven working days. If it is requested, an indication of how the matter will be dealt with and a likely time scale could be provided. If the decision is made not to investigate the matter, reasons will be given. The whistleblower will be informed of who will be
handling this matter, how to contact him/her and whether further assistance may or will be needed.

When a concern is raised, the whistleblower may be asked how he/she thinks the matter might best be resolved. If the whistleblower has any personal interest in the matter, it should be made known from the outset. If the concern falls more properly within the Grievance Procedure, he/she will be informed accordingly. While the purpose of this policy is to enable the Agency to investigate possible malpractice and take appropriate steps to deal with it, whistleblowers will be given as much feedback as possible, but full information may not always be given on the precise action taken where this could infringe a duty or confidence owed to someone else.

**HOW TO RAISE A CONCERN**

If an employee has a concern about malpractice, it is hoped he/she will feel able to raise it first with his/her supervisor, thereafter his/her Senior Manager. It could also be raised with the Chief Executive Officer. Thereafter the issue should be raised with the Accounting Authority. This may be done verbally or in writing. It must be stated whether he/she wishes to raise the matter in confidence so that they can make appropriate arrangements.

If these channels have been followed and the employee still has a concern, or feels that the matter is so serious that it cannot be discussed with any of the above, then the matter must be raised via the processes that are available to the public.

To ensure that allegations are considered consistently, Internal audit will report to the Risk Management committee on a quarterly basis as to the status of reports.
The matter can be raised by a member of the public through the following channels: -

The website www.eclb.org.za, wherein the “report fraud” is sent directly to the internal audit function.

The National Toll Free Service for the public sector is available to the public without access to the internet 0800 701 701. The monthly report will be sent directly to Chief Executive Officer, who will direct the report to internal audit.

The matter must be dealt with as included in the Fraud Prevention Strategy.

**EXTERNAL WHISTLE BLOWING**

While this policy is for Employees, Employees should be aware that should a member of the public wish to report fraud or corruption, they can do so in the following ways: -

- Via the website, www.eclb.org.za
- National Toll Free Service for the public sector 0800 701 701
- Directly to the Chief Executive Officer via post: -
  
  PO Box 18060  
  Quigney  
  5211
Annexure B: Declaration of interest of Staff, Audit Committee Members and Board of Directors

Designated person include the following: -

- Staff members,

- Audit Committee members,

- Director.

DISCLOSURE OF INTEREST

Every designated person shall, not later than 31 March of each year, disclose to the Risk Management Committee, on the form included herein, particulars of his or her registrable interests in respect of the year 1 April to 31 March of the current year. Furthermore, should this change during the year, this disclosure should be amended by the designated person.

Any person who becomes a designated person during the year to disclose the interest.

KINDS OF INTEREST TO BE DISCLOSED

The following kinds of financial interests are registrable interests: -

a. Shares and other financial interests in private or public, other than those listed on the Johannesburg Stock Exchange,

b. Directorships and partnerships,

c. Remunerated work outside the ECLB,
d. Consultancies and retainerships,

e. Sponsorships, and

f. Gifts and hospitality from a source other than a family member.

DETAILS OF REGISTRABLE INTERESTS TO BE DISCLOSED

The following details of registrable interests shall be disclosed: -

a. Shares and other financial interests in private or public companies and other corporate entities recognised by law: -

   i) The number, nature and nominal value of shares of any type in any public or private company and its name, and

   ii) The nature and value of any other financial interests held in private or public company or any other corporate entity and its name.

b. Directorships and partnerships

   i) the name and type of business activity of corporate entity or partnership, and

   ii) if applicable, the amount of any remuneration received for such directorships or partnerships (applicable to staff only).

c) Remunerated work outside the Entity (applicable to staff only): -

   i) the type of work, and

   ii) the name and type of business activity of the employer.

d) Consultancies and retainerships (applicable to staff only): -
i) The nature of the consultancy or retainership of any kind, and

ii) The name and type of business activity of client concerned.

e) Sponsorships (applicable to staff and Directors): -

i) The source and description of direct financial sponsorship or assistance, and

ii) The value of the sponsorship or assistance.

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

i) A description and the value and source of an gift with a value in excess of R300 (this is including money),

ii) A description and the value of gifts from a single source which cumulatively exceed the value of R300 in the 12 month period,

iii) Hospitality intended as a gift in kind.

CONFIDENTIALITY OF SUBMITTED FORMS AND REGISTER

The following shall have access to the submitted forms and/or register of declarations: -

a) The Board of Directors,

b) The Chief Executive Officer, and

c) Internal audit.
CONFLICT OF INTERESTS

The Declaration of interest forms will be submitted and a register compiled.

FAILURE TO DISCLOSE INTERESTS

Any designated person who: -

a) fails to disclose an interest in terms of this policy, or

b) when disclosing an interest wilfully provides incorrect or misleading details, will be subject to a disciplinary processes.
Declaration of interest form (1 of 3 pages)

Eastern Cape Liquor Board (ECLB)

This form is to be completed annually by all Staff, Directors and Audit Committee members: -

I ________________________________ in my position of ________________
at Eastern Cape Liquor Board declare the following interests for the year 1 April to 31 March: -

Business interests: -

<table>
<thead>
<tr>
<th>Name of company/Close Corporation/Partnership</th>
<th>Registration number</th>
<th>% Holding</th>
<th>Description of a possible conflict of interest</th>
<th>Is this business Registered on the ECLB supplier database? YES/NO</th>
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Family relationships: -

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<th>Name of person</th>
<th>Relationship</th>
<th>Business/company/ Close corporation</th>
<th>Description of a possible conflict of interest</th>
<th>Is this business Registered on the ECLB supplier database? YES/NO</th>
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Other interests: -

Disclose any other interest that you consider necessary as per the Fraud Prevention Strategy (Annexure B)

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I declare that the above is a complete list of interests that are disclosable in terms of the Fraud Prevention Strategy (Annexure B): -

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### Annexure C: Glossary of terms

<table>
<thead>
<tr>
<th>Abbreviation/Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Eastern Cape Liquor Board Act</td>
<td>Eastern Cape Liquor Act (Act 10 of 2003) – Provisional Eastern Cape Act</td>
</tr>
<tr>
<td>ECLB</td>
<td>Eastern Cape Liquor Board</td>
</tr>
<tr>
<td>Entity</td>
<td>Eastern Cape Liquor Board</td>
</tr>
<tr>
<td>Internal Audit</td>
<td>Internal audit of the Eastern Cape Liquor Board</td>
</tr>
<tr>
<td>External Audit</td>
<td>Auditor General (Eastern Cape)</td>
</tr>
<tr>
<td>Staff</td>
<td>Means all staff and management</td>
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<tr>
<td>Gifts</td>
<td>Includes monetary or/and any payment for service.</td>
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