PART 6: SECTOR SUPPLEMENTS
SUPPLEMENT FOR MUNICIPALITIES

1. Municipalities – the macro view and benefits of corporate governance

The functions performed by municipalities are derived from the Constitution of the Republic of South Africa, 1996 (the Constitution). The structural and institutional arrangements are different for the different types of municipalities, namely metropolitan, district and local municipalities. The common feature is that they are accountable to the community they serve. In terms of section 152 of the Constitution the objects of local government (which consists of municipalities) are:

- “to provide democratic and accountable government for local communities
- to ensure the provision of services to communities in a sustainable manner
- to promote social and economic development
- to promote a safe and healthy environment, and
- to encourage the involvement of communities and community organisations in the matters of local government.”

Section 153 of the Constitution furthermore refers to the “developmental duties” of municipalities.

The services of a municipality are far reaching and affect communities which include residents and businesses. Local government or municipalities provide the foundation for our democracy and its service delivery the basis for economic and social cohesion in the context of a developmental state. Due to this and the fact that municipalities use tax payers funds, levy surcharges on services such as electricity, water, sanitation, refuse removal and others, good corporate governance is paramount for the success of the municipality itself and those who are impacted by it. Good corporate governance assists with putting in place leadership and other structures as well as the processes and frameworks for the municipality to be responsive to the needs of the community.

2. Scope

This supplement applies to category A, B and C municipalities as provided for in the Municipal Structures Act, 2000 (Structures Act).

3. Relating King IV terminology to municipalities

In order to apply the King IV Code to municipalities without having to repeat it in its entirety, it is necessary to explain how the terminology used in the Code could be interchanged for terminology applicable to municipalities. Although leadership structures in municipalities are not directly comparable to that of other organisations, the following can be used as a guideline when interpreting the terminology in the King IV Code in a municipal context:

<table>
<thead>
<tr>
<th>Term used in King IV Code</th>
<th>Relevant term for municipalities</th>
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<tbody>
<tr>
<td>Organisation</td>
<td>Municipality</td>
</tr>
<tr>
<td>Governing body</td>
<td>Municipal Council</td>
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<tr>
<td>Management</td>
<td>Administration</td>
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<tr>
<td>Members of the governing body</td>
<td>Councillors</td>
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</table>
The office of mayor or executive mayor of a municipality does not have an equivalent in the King IV Code and in respect to these positions the Structures Act and other pertinent legislation should be followed.

The use of ‘corporate’ such as in ‘corporate governance’ is meant to refer to the governance of organisations that are incorporated to form legal entities separate from their founders. ‘Corporate’ does not only denote a company or for profit enterprise but all forms of incorporation whether as company, voluntary association, retirement fund, trust, legislated entity or others. The term corporate governance is used to differentiate it from other forms of governance, for example national or political governance.

4. Applying the practices in the King IV Code to municipalities

Certain recommended practices in the King IV Code are referenced in this supplement to illustrate how they could be customised to meet the demands and requirements of governing a municipality. It would be inaccurate to conclude that those practices in the King IV Code which are not dealt with in this supplement specifically are not applicable to municipalities.

The essence of the King IV Code as represented by its governance outcomes and principles applies to municipalities with the necessary adaptation in terminology and are repeated below for ease of referencing.

4.1 Municipalities in co-operative governance

Municipalities operate within a system of co-operative governance in terms of the Constitution. This necessitates the various spheres of government namely, national, provincial and local governments (which consists of municipalities) to co-operate in exercising their powers and performing their functions. The governance of municipalities should be viewed in this context.

4.2 Chapter 1: Leadership, ethics and corporate citizenship

<table>
<thead>
<tr>
<th>OUTCOME: ETHICAL CULTURE</th>
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<tr>
<td>Principle 1.1: Council should set the tone and lead ethically and effectively.</td>
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<tr>
<td>Principle 1.2: Council should ensure that the municipality’s ethics is managed effectively.</td>
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</table>
Principle 1.3: Council should ensure that the municipality is a responsible corporate citizen.

Council should, by its own example, set the tone for a culture that fosters accountability for the proper execution of the objectives of the municipality as per Principle 1.1. The values of accountability, responsibility, fairness and transparency exemplify ethical leadership and should be the cornerstone upon which any enterprise is conducted regardless of size and nature of operations. Thus sound governance and leadership start with a focus by the members of the governing body on their own - individual and collective - character and behaviour. This is congruent with the Code of Conduct for Councillors as per Schedule 1 of the Municipal Systems Act, 2000 (MSA).

In addition to setting the example through its own character and behaviour, in accordance with Principle 2.2, council should oversee that the municipal code for employees as contained in schedule 2 of the MSA is adhered to.

Corporate citizenship as dealt with in Principle 1.3 is an alternative expression of the core purpose of the municipality as set out in section 152(1) of the Constitution. As such the recommended practices under this principle apply with the necessary adaptation for municipalities.

### 4.3 Chapter 2: Performance and reporting

<table>
<thead>
<tr>
<th>OUTCOME: PERFORMANCE AND VALUE CREATION</th>
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<tbody>
<tr>
<td>Principle 2.1: Council should lead the value creation process by appreciating that strategy, risk and opportunity, performance and sustainable development are inseparable elements.</td>
</tr>
<tr>
<td>Principle 2.2: Council should ensure that reports and other disclosures enable stakeholders to make an informed assessment of the performance of the municipality and its ability to create value in a sustainable manner.</td>
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Chapter 2: Performance and Value Creation should be interpreted in accordance with the Constitution that provides for the objectives of the municipality in section 152(1). These constitutional objectives explain the meaning of value creation in a municipal context.

The Integrated Development Plan (IDP) as provided for in the MSA sets out the strategy for municipalities and references to strategy in Principle 2.1 should be understood as such. Council is accountable for the implementation of the IDP and should oversee performance in terms of it as part of its legal duties. The recommended practices under Principle 2.2 should be considered by council to give effect to its duties in this regard.

Meaningful disclosure is the mechanism by which council is held accountable by community members and other stakeholders. The practices with regards to disclosure and reports as under Principle 2.2 should be considered by municipalities as a means for meaningful communication and to demonstrate accountability.
4.4 Chapter 3: Governing structures and delegation

<table>
<thead>
<tr>
<th>OUTCOME: ADEQUATE AND EFFECTIVE CONTROL</th>
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<tr>
<td>Principle 3.1: Council should serve as the focal point and custodian of corporate governance in the municipality.</td>
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<tr>
<td>Principle 3.2: Council should ensure that in its composition it comprises a balance of the skills, experience, diversity, independence and knowledge needed to discharge its role and responsibilities.</td>
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<tr>
<td>Principle 3.3: Council should consider creating additional governing structures to assist with the balancing of power and the effective discharge of responsibilities, but without abdicating accountability.</td>
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<tr>
<td>Principle 3.4: Council should ensure that the appointment of, and delegation to, competent executive management contributes to an effective arrangement by which authority and responsibilities are exercised.</td>
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<tr>
<td>Principle 3.5: Council should ensure that the performance evaluations of council, its structures, its members, the executive mayor and the municipal manager and municipal secretary or corporate governance professional result in continued improved performance and effectiveness.</td>
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Council as the focal point for corporate governance
Council should serve as the focal point of corporate governance as provided in Principle 3.1. In accordance with the MSA a municipality is “an organ of state within the local sphere of government exercising legislative and executive authority within an area”. In terms of section 151 of the Constitution both legislative and executive authority vest in council. Therefore, even though the Municipal Finance Management Act, 2003 (MFMA) ascribes fiduciary duties to the municipal manager as accounting officer, council shares in these fiduciary duties of by virtue of its constitutional role.

Responsibilities of council
The Constitution, MFMA, Structures Act and MSA provide for specific responsibilities of council. These legislated responsibilities are consistent with the role of a governing body as expressed under Principle 3.1 of the King IV Code, namely:

a. providing direction and strategy
b. giving effect to strategy by approving policy, including plans, frameworks, structures and procedures
c. providing oversight of implementation, and
d. demonstrating accountability and transparency through disclosure.

In municipal context council providing direction and strategy, as in (a) above, should be understood as the adoption of “a single, inclusive and strategic plan for the development of the municipality” as provided for in section 25(1) of the MSA. This is given effect to, as in (b) above, by aligning resources and capacity for implementation and the approval of annual budget (section 25 of the MSA). Oversight of implementation as per (c) is achieved through the performance management systems provided for in the MSA and (d) accountability demonstrated through the annual reports (section 46 of the MSA).

In addition to its overarching role, the specific responsibilities of the board are set out under Principle 3.1.
This is applicable to council as the governing body of the municipality in order to give effect to its legislated responsibilities.

**Nomination and composition of council**

Principle 3.2 deals with the appointment procedures and composition of the governing body. The practices under this principle should be implemented keeping in mind the following:

Council is a political structure composed of councillors (either representing a political party or being independent) who are democratically elected by registered voters within the jurisdiction of the municipality. The legislative provisions prevail over the recommended practices for nomination, election and rotation under Principle 3.2.

Due to the fact that the composition of council cannot be pro-actively planned on the basis of skills and experience required, there should be strong emphasis on an in-depth induction for newly elected councillors at the start of a new political term. Council should furthermore ensure that a continued and robust professional education programme is established which runs for the full term of office. Obtaining independent advice to assist it in the execution of its duties as is recommended in the practices under Principle 3.2 will also be helpful to supplement specific knowledge requirements.

Independence of the members of the governing body is dealt with under Principle 3.2. Municipal councillors are elected to represent local communities on council and they may have party political affiliations which result in them not being independent in form. As a matter of legal duty councillors must act in substance with independence of mind in the best interests of the municipality in accordance with the Code of Conduct per Schedule 1 of the MSA. The constitutional integrity of the council as a collective body acting at all times in the best interest of the municipality enjoys priority over the interests which individual councillors may have.

There is no independent chair of council as provided for in the Code. The role of chair is fulfilled by the speaker. It is recommended that the practices under Principle 3.2 in relation to the chair be considered for how these could supplement the role of the speaker.

**Delegation to additional governing structures and administration**

Principle 3.3 deals with the delegation by council to other governing structures and Principle 3.4 addresses delegation to executive management.

These principles are consistent with the MSA that provides in section 59 that council must “develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances”. The MSA prescribes a wide range of powers and functions that may or may not be delegated. Council can only delegate authority if it is expressly or by implication authorised to do so by regulation. The recommended practices under Principles 3.3 and 3.4 should be understood against this background.
Whilst the Constitution recognises the principle of separation of powers of the three branches of government (executive, legislature and judiciary), a municipal council is vested with both legislative and executive authority. The MFMA requires a certain level of oversight by the municipality over the executive authority which includes, the annual report including the financial statements, the Service Delivery and Budget Implementation Plan and the performance of the municipal manager and other section 57 employees. In order to give effect to this, guidelines have been issued for the establishment of Municipal Public Accounts Committees (MPAC). An MPAC is set up by council as a committee thereof in terms of section 79 of the Structures Act to perform general oversight over the executive. This constitutes an expansion of the practices as recommended under Principle 3.3 in the Code which deals with delegation to committees of the governing body.

Audit committee duties in relation to the appointment and independence of the auditor apply differently as the Auditor-General serves as the external auditor for a municipality. Furthermore, the composition of an audit committee of a municipality is prescribed by legislation and prevails over the recommended practices in the Code. The practices recommended in the Code for the execution of the duties of the audit committee apply to provide substance to legislated duties.

**Performance management**

Measurement of performance of members of the council as dealt with under Principle 3.5 applies to municipalities. In respect of council members who are deployed by political parties it is recommended that council and political parties collaborate on how the assessment of councillors is conducted.

**Municipal secretary**

Although municipalities do not as a matter of course appoint a municipal secretary in the same way as a company appoint a company secretary, it is recommended that council ensures that it has access to the services of a corporate governance professional as a source of guidance on governance.

### 4.5 Chapter 4: Governance functional areas

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<thead>
<tr>
<th>OUTCOME: ADEQUATE AND EFFECTIVE CONTROL</th>
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<tbody>
<tr>
<td>Principle 4.1: Council should govern risk and opportunity in a way that supports the municipality to set and achieve strategic objectives.</td>
</tr>
<tr>
<td>Principle 4.2: Council should govern technology and information in a way that supports the municipality to set and achieve strategic objectives.</td>
</tr>
<tr>
<td>Principle 4.3: Council should govern compliance with laws and ensure consideration of adherence to non-binding rules, codes and standards.</td>
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1 Municipal Public Accounts Committee: Enhancing Oversight in the Municipality; Practical Guide issued by SALGA and National Treasury, March 2012. Also refer to section 129(4) of the MFMA.
Principle 4.4: Council should ensure that the municipality remunerates fairly, responsibly and transparently so as to promote the creation of value in a sustainable manner.

Principle 4.5: Council should ensure that assurance results in an adequate and effective control environment and integrity of reports for better decision-making.

The recommended practices under Principles 4.1 to 4.5 should be interpreted and applied in conjunction with the relevant legislative and regulatory provisions. Where municipalities are not able to implement the recommended structures and functions due to capacity and resource constraints, it is recommended that a shared services model be considered or that practices be applied on a proportional basis.

4.6 Chapter 5: Stakeholder relationships

**OUTCOME: TRUST, GOOD REPUTATION AND LEGITIMACY**

| Principle 5.1: As part of its decision-making in the best interests of the municipality, council should ensure that a stakeholder-inclusive approach is adopted, which takes into account and balances their legitimate and reasonable needs, interests and expectations. |
| Principle 5.2: Council should ensure that the municipality responsibly exercises its rights, obligations, legitimate and reasonable needs, interests and expectations, as holder of beneficial interest in the securities of a company. |

**Stakeholders**

There are no shareholders in a municipal structure. In terms of legislation, a municipality's main duty is to serve the community, who have the right to contribute to decision-making processes. The practice recommendations under Principle 5.1 are applicable to give effect to these duties of council and also as far as other stakeholders, such as employees and regulators, are concerned.

In alignment with government initiatives already underway, it is recommended that councils of municipalities be pro-active in setting up reviews of municipal service delivery by the citizenry as a performance monitoring and evaluation mechanism.

**Municipal entities**

In keeping with Principle 5.2 council should assume responsibility for oversight of its municipal entities, where applicable. Council should ensure that there is alignment between the business plan of the municipal entity (ME) developed in terms of section 87 of the MFMA, the municipal mandate and the IDP. There should be integration of the municipality and the ME’s strategy and execution so that the ME does not operate outside of the mandate, powers and functions assigned and agreed with the municipality. Council is furthermore legally obliged to oversee the performance of administration and executive organs of the municipality, including the MEs. A governance framework should be developed as per the recommended practices for group companies under Principle 5.2.