

**LEGAL COMPLIANCE REPORT 2009**

**LEJWELEPUTSWA DISTRICT MUNICIPALITY AND LOCAL MUNICIPALITIES**

## **LEJWELEPUTSWA DISTRICT MUNICIPALITY**

### **Non-compliance with applicable legislation**

#### **Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)**

1. Contrary to section 65(2)(e) of the MFMA, invoices amounting to R351 477 were not paid within 30 days of receipt of the invoice, while it could not be confirmed that invoices amounting to R1 693 544 were paid within 30 days of receipt of the invoice, as the invoices did not contain a date stamp indicating the date on which they were received.
2. The submission of the annual reports and financial statements of the Lejwe Le Putswa Development Agency for 2006-07 was not adequately monitored, as required by section 128 of the MFMA.
3. Unauthorised expenditure of R1 306 077 for the previous financial year has not been authorised in an adjustment budget or certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council, as required in terms of section 32(2)(a) of the MFMA.
4. Irregular, fruitless and wasteful expenditure of R6 361 015 incurred during the previous financial year has not been recovered or, after investigation by a council committee, certified by the council as irrecoverable and written off, as required by section 32(2)(b) of the MFMA.
5. Contrary to section 32(4) of the MFMA, the mayor, the MEC for local government in the province and the Auditor-General were not informed in writing of the unauthorised and irregular expenditure incurred during the current financial year.
6. Evidence could not be obtained that the mid-year budget and performance of the Lejweleputswa Development Agency (Pty) Ltd was assessed by the municipality, as required in terms of section 72 of the MFMA

#### **Local Government: Municipal Systems Act**

1. Two members of the council did not declare their financial interests, as required by schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA).
2. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the MSA
3. The key performance indicators set by the municipality did not include four general key performance indicators applicable to the municipality, as prescribed in terms of section 43(1) of the MSA.
4. The municipality did not develop and implement mechanisms, systems and processes for auditing the results of performance measurement as part of its internal auditing processes, as required in terms of section 45 of the MSA
5. A functioning performance audit committee, as required by section 14(2)(a) of the Planning and Performance Management Regulations, 2001, did not exist during the year under review

6. The municipality did not report on 10 predetermined objectives, as required by sections 41(1)(c) and 46 of the MSA

## **MASILONYANA**

### **Non-compliance with applicable legislation**

#### **Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)**

1. The municipality did not comply with various sections of the MFMA. No disclosure of such non-compliance was made in the financial statements as required by section 125(2)(e).
2. Section 131(1) of the MFMA requires that action must be taken on the Auditor-General's report. The municipality did not comply with this section as very little was done regarding the prior year's findings.
3. No evidence could be provided that a fraud prevention plan existed and that a risk assessment had been performed, as required by section 62(1) of the MFMA.
4. Section 21 (1b) requires that the mayor should, at least 10 months before the start of the budget year, table in the municipal council a time schedule for the budget outlining key deadlines. Proof thereof could not be submitted to audit.
5. No proof could be obtained that the approved budget had been submitted to the National Treasury as required by section 24(3).
6. The monthly reports were not submitted timeously to the National Treasury as required by section 71.
7. The municipality did not submit an annual report which includes the annual performance report of the municipality prepared by the municipality in terms of section 46 of the MSA, as required by section 121(3) of the MFMA

#### **Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA)**

1. The human resource capacity was not developed to a level which enabled it to perform its functions and exercise its powers in an economical, effective, efficient and accountable way, as required by section 68.
2. The municipality's credit control and debt collection policies were not implemented and these policies were not monitored, as required by sections 99 and 100.
3. Declarations of interest, as required by schedule 1 to the MSA, could not be obtained for councillors (paragraph 5 of the code of conduct for councillors) or managers (paragraph 5 of the code of conduct for municipal staff members) for the year under review.
4. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of MSA.
5. The integrated development plan of the municipality did not include the key performance indicators and performance targets determined in terms of its performance management system, as required by section 26(i) of the Local Government: Municipal Systems Act,

2000 (Act No. 32 of 2000) (MSA)

6. The integrated development plan did not reflect a financial plan, which must also include a budget projection for at least the next three years as required by section 26(h) of the MSA
7. No proof could be provided that the municipality had given the local community at least 21 days to comment on the final draft of its integrated development plan before the plan was submitted to the council for adoption as required by regulation 15(3) of the Local Government: Municipal Planning and Performance Management Regulations, 2001
8. No proof could be provided that the municipality had afforded the local community at least 21 days to comment on the final draft of its integrated development plan before the plan is submitted to the council for adoption as required by section 25(4) of the MSA
9. No proof could be provided that the municipal council had reviewed its integrated development plan annually in accordance with an assessment of its performance measurements as required by section 34 of the MSA.
10. No evidence could be provided that the municipality had a performance management system framework including all detail as required by regulation 7.
11. The municipality did not set measurable performance targets with regard to each of its development priority and objective as required by section 41(1)(b) of the MSA
12. The municipality did not developed a service delivery and budget implementation plan with the relevant service delivery targets and performance indicators for each quarter as required by *MFMA circular 13*.
13. The municipality did not establish a process of regular reporting to the council, other political structures, political office-bearers and staff of the municipality as is required by section 41(1) of the MSA.
14. The accounting officer of a municipality did not by 25 January assess the performance of the municipality during the first half of the financial year, taking into account the municipality's service delivery performance during the first half of the financial year and the service delivery targets and performance indicators set in the service delivery and budget implementation plan, as required by section 72(1) of the MFMA.

## **TSWELOPELE**

### **Non-compliance with applicable legislation**

#### **Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)**

1. Contrary to section 9(b) of the MFMA, the accounting officer did not submit the name of each bank where the municipality holds a bank account, and the type and number of each account to both the provincial treasury and the Auditor-General.
2. Contrary to section 20(1) of the Environment Conservation Act, (Act No. 73 of 1989), the municipality does not have a permit for a landfill site in the Bultfontein area.
3. Contrary to section 62 of MFMA, the municipality did not implement and monitor the risk management policy approved by the council.

4. Contrary to section 62 of MFMA, the fraud prevention plan was not implemented although it was approved by council.
5. Contrary to section 165(2)(b)(vii) of the MFMA, the accounting officer did not report regularly to the municipality's audit committee on matters relating to compliance with all legislation applicable to the municipality.
6. The registered certificate issued by the Registrar of Companies on close corporations in respect of the following service providers could not be made available.
7. The supply chain management policy (SCMP), which is effective as from 1 March 2006, states that no goods, services or the execution of work to an amount over R2 000 (VAT inclusive) up to R10 000 (VAT inclusive) shall be acquired unless three verbal quotations have been obtained. A verbal quotation shall only be accepted against written confirmation of the quoted price. Contrary to the above, no visible proof could be found that three quotations had been requested from three different suppliers when procuring the goods.
8. No proof was provided that the municipality had informed National Treasury about awarding contracts valued above R100 000 up to R6 002 319, as required by MFMA Circular No. 34.
9. In terms of section 121(3)(c) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), section 20(1)(c) of the Public Audit Act, 2004 (Act No. 25 of 2004), stipulates that an audit report must reflect an audit opinion or conclusion relating to the performance of the auditee against predetermined objectives. No annual performance information report was provided for audit purposes.
10. No evidence could be provided that the following contractor was registered and their CIDB grading could not be found in the contract file despite the fact that regulations in terms of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) stipulates that a municipality classified as a medium-capacity municipality must be registered at the CIDB as from 30 July 2006. A municipality classified as a medium-capacity municipality in *Government Notice 733 of 1 July 2004 "Local Government: Municipal Finance Management Act 2003 Delays and exemptions"*, on 30 July 2006, and the above organs of state must apply the register of contractors to their procurement processes as contemplated in section 16(4) of the act as from the above dates and in accordance with Part IV of these Regulations.
11. The municipality did not have a bad debt policy to determine the manner in which provision for bad debts should be raised and under which conditions bad debts should be written off, contrary to section 64(2)(a) of the MFMA which stipulates that the accounting officer of a municipality must take all reasonable steps to ensure that the municipality has effective revenue collection systems consistent with section 95 of the Municipal Systems Act and the municipality's credit control and debt collection policy. In terms of this section the accounting officer must ensure that the municipality has and maintains a system of internal control in respect of debtors and revenue. The matter was reported in both the 2005-06 and 2006-07 financial years.
12. Section 64(3) of the MFMA stipulates that the accounting officer must immediately inform the National Treasury of any payments due by an organ of state to the municipality in respect of municipal tax or for municipal services, if such payments were regularly in arrears for periods of more than 30 days. Some organs of state had accounts in arrears for longer than the prescribed limits.

13. In terms of section 121(3)(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Local Government: Municipal Systems Act 2000 (Act No. 32 of 2000) (MSA).

## **MATJHABENG**

### **Non-compliance with applicable legislation**

#### **Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)**

1. Contrary to the requirements of section 64(3) of the MFMA, proof could not be obtained that the accounting officer had informed National Treasury of payments due by an organ of state to the municipality in respect of municipal tax or municipal services. The outstanding government debtors as at 30 June 2008 amounted to R7 522 325 of which R5 981 011 had been outstanding for a period of 90 days and longer
2. Income from traffic fines was not paid into the municipality's primary bank account as required by section 8(2) of the MFMA.
3. Proof could not be obtained that the accounting officer had promptly notified National Treasury in the prescribed format regarding the municipality's bank overdrawn position as required by section 70(2) of the MFMA.
4. The executive mayor of the municipality did not table the annual budget at a council meeting at least 90 days before the start of the budget year as required by section 16(2) of the MFMA.
5. All money owing by the municipality was not paid within 30 days of receiving the relevant invoice or statement. Payments of R5 595 110 were not paid within the prescribed time frame as is required by section 65(2)(e) of the MFMA.
6. Contrary to the requirements of section 32(2)(a) of the MFMA, proof could not be obtained that the municipality had taken any steps to recover unauthorised expenditure of R58 801 154 as disclosed in note 24.1 to the financial statements.
7. Proof could not be obtained that the accounting officer had submitted the oversight report to the provincial legislature within seven days after the municipal council adopted this report, as required by section 132(2) of the MFMA.
8. Proof could not be obtained that the municipality's service delivery and budget implementation plan had been approved by the executive mayor within 28 days after the approval of the budget as required by section 53(1)(c)(ii) of the MFMA.
9. Proof could not be obtained that the accounting officer had submitted a report to the executive mayor within 10 days after the end of each month on the state of the municipality's budget as required by section 71(1) of the MFMA.
10. Contrary to the requirements of section 32(4)(a)-(c) of the MFMA, proof could not be obtained that the accounting officer had informed the executive mayor, the MEC for local government in the province and the Auditor-General in writing of any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality

#### **Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)**

1. Contrary to the requirements of section 14(2)(b)(iii) of this act, three bank accounts were identified that have not been registered in the name of the Matjhabeng Local Municipality. Furthermore, properties to the value of R36 317 100 were identified which were also not registered in the name of the Matjhabeng Local Municipality.

**Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)**

1. Proof could not be obtained that the debt collection policy of the municipality complied with all the requirements set out in section 97 of this act. Furthermore the municipality did not adopt by-laws in terms of section 98 to give effect to" the municipality's credit control and debt collection policy.
2. Contrary to section 75 of this act, proof could not be obtained that the municipal council adopted by-laws to give effect to the implementation and enforcement of its tariff policy.
3. In terms of section 121{3}(c) of the MFMA, the annual report of a municipality must include the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Local Government: Municipal Systems Act 2000 (Act No. 32 of 2000) (Systems Act).
4. Proof could not be obtained that a copy of the municipality's integrated development plan was submitted to the MEC for local government within the prescribed time frame as required by section 32 of the Systems Act.
5. Contrary to the requirements of section 53(3) of the MFMA, proof could not be obtained that the revenue and expenditure projections for each month as well as the service delivery targets and performance indicators for each quarter were made public within the prescribed time frame.
6. Contrary to the requirements of section 43(2) and 41(1) of the Systems Act, the municipality did not report on the general key performance indicators.
7. The municipality's internal audit did not audit the results of the municipality's performance measurements as required by section 45(a) of the Systems Act.



CL Hohne

22 July 2009