

MASILONYANA LOCAL MUNICIPALITY



RELATED PARTIES AND DISCLOSURE OF INTEREST POLICY (DRAFT) 2020-2021

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1 DEFINITIONS

Related party – is a person or an entity with the ability to control the other party, or exercise significant influence over the other party in making financial and operating decisions.

Related party transaction – is a transfer of resources, services or obligations between the municipality and a related party, regardless of whether price is charged.

Significant influence – is the power to participate in the financial and operating policy decisions of the municipality, but has no control over those policies.

Management – comprises those persons responsible for planning, directing and controlling the activities of the municipality, including those charged with the governance of the municipality in accordance with legislation, in instances where they are required to perform such functions.

Control – is the power to govern the financial and operating policies of the municipality so as to obtain benefits from its activities.

Joint Control – is the agreed sharing of control over an activity by a binding arrangement, and exists only when the strategic financial and operating decisions relating to the activity require the unanimous consent of the parties sharing control.

Close members of the family of a person – are those family members who may be expected to influence, or be influence by that person in their dealings with the municipality.

2 LEGISLATIVE REQUIREMENTS

2.1. Municipal Finance Management Act, Section 123: Disclosures applicable to municipalities and municipal entities

Section 123(1) and 125 of the MFMA requires a municipality to disclose the following information on the annual financial statements:

- a) any allocations received by the municipality from:
 - i. an organ of state in the national or provincial sphere of government; or
 - ii. a municipal entity or another municipality

- b) any allocations made by the municipality to:
 - i. a municipal entity or another municipality; or
 - ii. any other organ of state;

- c) how any above allocations were spent, per vote, excluding allocations received by the municipality as its portion of the equitable share or where prescribed otherwise because of the nature of the allocation;

- d) whether the municipality has complied with the conditions of:
 - i. any allocations made to the municipality in terms of section 214 (1) (c) of the South African Constitution (i.e. any other allocations to a municipality from the national government's share of the non-equitable revenue raised nationally or provincially or from local spheres of government, and any condition of which those allocations may be made); and
 - ii. any allocations made to the municipality other than by national organs of state;

- e) the reasons for any non-compliance with above conditions;

- f) whether funds destined for the municipality in terms of the annual Division of Revenue Act were delayed or withheld, and the reasons advanced to the municipality for such delay or withholding.

2.2. Municipal Finance Management Act, Section 124: Disclosure of remuneration of management

Section 124 of the MFMA requires that the annual financial statements of a municipality must include particulars of:

- a) the salaries, allowances and benefits of political office-bearers and councillors of the municipality, whether financial or in kind, including a statement by the accounting officer whether or not those salaries, allowances and benefits are within the upper limits of the framework envisaged in section 219 of the Constitution;
- b) any arrears owed by individual councillors to the municipality, or municipal entity under its sole or shared control, for rates or services and which at any time during the relevant financial year were outstanding for more than 90 days, including the names of those councillors; and
- c) the salaries, allowances and benefits of the municipal manager, the chief financial officer, every senior manager and such categories of other officials as may be prescribed.

2.3. Generally Recognised Accounting Practice

This policy has been formulated based of GRAP 20 – Related Party Disclosures. This standard has been approved by the Accounting Standards Board but its effective date has not been determined by the Minister of Finance.

3 OBJECTIVE

3.1. The purpose of this policy is to set forth policies and procedures of identifying related party transactions and disclosures to be made in relation to related party transactions that occur.

3.2. The policy shall apply to all management personnel of Masilonyana Local Municipality. Management comprises those persons responsible for planning, directing and controlling the activities of the municipality, including those charged with the governance of the municipality in accordance with legislation, in instances where they are required to perform such functions.

4 IDENTIFICATION OF RELATED PARTY TRANSACTIONS

4.1. A related party transaction is defined as:

- a) The ability to control the other person or entity
- b) The ability to jointly control the other person or entity
- c) The ability to exercise significant influence over the other person or entity

The ability descriptions to a related party transaction are summarised as follows:

#	Ability	Ability Description
1	Has the ability to control the other person or entity	Control is: <ul style="list-style-type: none">➤ The power to govern the financial and operating policies of an entity➤ so as to obtain benefits from its activities
2	Has the ability to jointly control the other person or entity	Joint control is: <ul style="list-style-type: none">➤ the agreed sharing of control over an activity➤ by a binding arrangement, and➤ exists only when the strategic

		financial and operating decisions relating to the activity require the unanimous consent of the parties sharing control.
3	Exercise significant influence over the other person or entity	Significant influence is: <ul style="list-style-type: none"> ➤ the power to participate in the financial and operating policy decisions of an entity ➤ but is not control over those policies
4	Is subject to common control or joint control of the other entity.	In determining common control , the Standard of GRAP on Consolidated and Separate Financial Statements or Standard on GRAP on Transfers of Functions Between Entities Under Common Control and Transfers of Functions Between Entities Not Under Common Control should be considered.

4.2. The definition of related party extends to close members of the family. Close members of the family are those family members who may be expected to influence, or be influenced by that person in their dealings with the municipality.

4.3. Judgement shall be exercised by management, where necessary by the Audit Committee and/or Council in determining whether a person should be identified as a close member of the family of another person for the purposes of application of this policy. In the absence of information to the contrary, such as where a spouse or other relative is estranged from the family, immediate family members and close relatives are presumed to have, or be subject to, such influence as to satisfy the definition of close members of the family of that person.

4.4. At a minimum the following should be considered to be close members of the family (GRAP 20:11):

- a) That person's children and spouse and domestic worker;
- b) Children of that person's spouse or domestic partner;
- c) Dependants of that person or that person's spouse or domestic partner;
- d) A grandparent, grandchild, parent, brother or sister; and
- e) A parent-in-law, brother-in-law or sister-in-law.

In considering each possible related party relationship, attention is directed to the substance of the relationship, and not merely the legal form. The mere fact that a member of management personnel is common between two entities does not necessarily create a related party relationship. It is necessary to consider the possibility, and to assess the likelihood, that the person would be able to affect the policies of both entities in their mutual dealings.

5 MANAGEMENT OF POTENTIAL RELATED PARTY TRANSACTIONS AND RELATED PARTY TRANSACTIONS

5.1. Any employee or municipal management who is aware of a potential conflict of interest shall discuss the transaction with immediate supervisor/manager. Employees are encouraged to report or discuss potential related party transactions promptly.

5.2. The following persons (officials and councillors) of the municipality shall declare/disclose annually their financial interests and as and when circumstances change. The declarations shall be submitted to the office of the Municipal Manager.

- a) Mayor
- b) Speaker
- c) All other Councillors
- d) Municipal Manager
- e) Chief Financial Officers
- f) All other directors
- g) All officials within the Supply Chain Management Unit

- h) All officials appointed to serve in the Specification, Evaluation & Adjudication Committee
- i) All officials appointed on Post level 12 and above.

5.3. Each of the above mentioned Councillors / Officials must declare his / her interest at least within two months of election / appointment and the declaration must be updated at least by the end of August annually thereafter by completing the relevant form.

5.4. An additional disclosure may be made by the relevant Councillor / Official as an Addendum in case where the official disclosure form does not cater for such disclosure.

5.5. Supplier of goods and services, on database or not on database, shall declare their financial interests annually or as and when circumstances change.

5.6. Any identified potential related party is reviewed by the Municipal Manager / Chief Financial Officer, where necessary by the Audit Committee and/or Council, to determine whether the transaction or relationship does, in fact, constitute a Related Party transaction requiring compliance with this policy.

5.7. If the related party transaction involves top management, the employee shall according to whistle blowing policy report the matter to Audit Committee and be protected by the whistle blowing policy.

6 DISCLOSURE OF RELATED PARTY TRANSACTIONS

6.1. Disclosure of Control

6.1.1. Related party relationships where control exists shall be disclosed, irrespective of whether there have been transactions between the related parties. An entity shall disclose the name of its controlling party, and if different, the ultimate controlling party.

6.2. General disclosure requirements

6.2.1. If a reporting entity has had related party transactions during a financial period, it shall disclose the following (GRAP 20:27):

- a) The nature of the related party relationship. This disclosure may include the description of the nature such as whether the relationship was one of a controlling entity, a controlled entity, an entity under common control, member of management/key management personnel, etc.;
- b) Information about those transactions and outstanding balances, including commitments necessary for users to understand the potential effect of the relationship on the financial statements. This may include details of the type of transactions necessary to clarify the significance of these transactions such as broad terms and conditions, amounts and proportions, how these terms differ from those normally associated with similar transactions with unrelated parties, etc.
- c) At a minimum, disclosures shall include:
 - The amount of the transactions;
 - The amount of outstanding balances, including commitments; and
 - Their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and

- Details of any guarantees given or received.
- Provision for doubtful debts related to the amount of outstanding balances; and
- The expense recognised during the period in respect of bad or doubtful debts due from related parties.

6.3. Exemptions of disclosure of related party transactions

6.3.1. A reporting entity is exempt from all disclosure requirements in relation to related party transactions if that transaction occurs within:

- Normal supplier and/or client/recipient relationships on terms and conditions no more or less favourable than those which it is reasonable to expect the entity to have adopted if dealing with that individual entity or person in the same circumstances; and
- Terms and conditions within the normal operating parameters established by that reporting entity's legal mandate.

Where a reporting entity is exempt from the related party transactions disclosures, the entity shall disclose narrative information about the nature of the transactions and the related outstanding balances. This is to enable users of the reporting entity's financial statements to understand the effect of the related party transactions on its financial statements. (GRAP 20:34)

6.4. Disclosure of Remuneration of Management

GRAP 20 paragraph 35 states that:

The entity shall also disclose:

- a) the remuneration of management per person and in aggregate, paid or receivable for the last financial period, for each class of management, in the following categories:
 - fees for services as a member of management;
 - basic salary;

- bonuses and performance related payments;
- other short-term employee benefits;
- sums paid by way of expense, salary or other allowance;
- contributions made to any pension fund, medical aid fund, insurance scheme, etc.;
- post-employment benefits such as pensions, other retirement benefits, post-employment life insurance and post-employment medical care;
- termination benefits;
- other long-term benefits;
- any commission, gain, profit or surplus sharing arrangements;
- any share options, including their strike price and period; and
- any other benefits received

GRAP 20 provides for the following additional sub-categories as a guide to identifying classes of management:

- the governing body of the reporting entity;
- the governing body of an economic entity who has the authority and responsibility for planning, directing and controlling the activities of the entity
- sub-committees
- key advisors of these bodies and committees
- the senior management team of the entity, which includes the chief executive officer or permanent head of the entity; etc.

This disclosure is in line with the requirements of MFMA section 124

7 IMPLEMENTATION, EVALUATION AND REVIEW

- (a) This policy shall be implemented once approved by Council.
- (b) Directorates/ departments are to ensure that during implementation stages that there is consistent monitoring & evaluation of the policy as indicators will inform blockages within the policy implementation phases.
- (c) Changes in legislation must be taken into account for future amendments to this policy.
- (d) Any amendments to this policy must be re-submitted to council for review and approval.

8 POLICY ADOPTION

This policy has been considered and approved by the Council of **Masilonyana Local Municipality** on this day..... of 20.....

This policy will take effect at **Masilonyana Local Municipality** on this day..... ofJuly **2016**.