

CENTRAL KAROO DISTRICT MUNICIPALITY

MUNICIPAL ENTITIES POLICY

25 MAY 2017

1. **DEFINITIONS AND ABBREVIATIONS:**

"**CKDM**" means the Central Karoo District Municipality, a municipality established in terms of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998), or any structure or employee of the CKDM acting in terms of delegated authority;

"**Council**" means the Municipal Council of the CKDM;

"**Companies Act**" means the Companies Act, 2008 (Act No.71 of 2008);

"**Director**" means a director serving on the board of directors of a municipal entity;

"**Mayco**" means the Mayoral Committee appointed in terms of section 60 of the Local Government : Municipal Structures Act, 1998 (Act No. 117 of 1998);

"**MFMA**" means the Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003);

"**Municipal entity**" means a municipal entity referred to in section 868 (1) of the Systems Act;

"**Municipal representative**" means a council or an official of the CKDM, or both who has been designated as such in terms of Section 930 of the Systems Act to -

- (a) represent the City as a non -participating observer at meetings of the board of directors of the municipal entity concerned; and
- (b) attend shareholder meetings and to exercise the CKDM's rights and responsibilities as a shareholder, together **with** such other councilors or officials that the Council may designate as representatives.

"**Municipal Representative (councilor)**" means a Councilor who has been designated as a municipal representative;

“Municipal representative (official)” means an official who has been designated as a municipal representative;

“Performance Audit Committee” means the Performance Audit Committee of the CKDM appointed in terms of Regulation 14(2) of the Municipal Planning and Performance Management Regulations made in terms of the Systems Act;

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

2. PROBLEM STATEMENT:

As parent municipality the CKDM is responsible for oversight and monitoring of its municipal entities.

3. DESIRED OUTCOMES:

This policy seeks to supplement existing legal imperatives to enable the CKDM to perform its monitoring and oversight role over municipal entities. The policy further consolidates existing policies relating to municipal entities into one policy and clarifies lines of authority for municipal representatives.

4. STRATEGIC INTENT:

The Strategic focus area of this policy is to assist the CKDM in one of the Integrated Development Plan (IDP) mandates i.e. *"The well-run CKDM"*. The objective is to ensure a transparent and corruption-free government which is essential for the success of all other programmes of the CKDM.

5. POLICY PARAMETERS:

The CKDM, as parent municipality to its municipal entities, is required to monitor and have oversight of the entities. As part of its oversight role, the CKDM aims to adopt a process for appointing directors to the boards of the municipal entities. The Municipal Entity policy set out –

- 5.1 The legal imperatives as required by the Systems Act, MFMA and the Companies Act;
- 5.2 The authorizations needed to effectively monitor and conduct the necessary oversight of the municipal entities;
- 5.3 The manner in which the CKDM's rights and responsibilities as a shareholder are exercised.

6. ROLE PLAYERS AND STAKEHOLDERS:

6.1 Municipal entity, including –

- a. The board of directors and administration;
- b. Chairperson of the Board of a Municipal Entity;
- c. Accounting Officer of a Municipal Entity; and
- d. Members of the Audit Committees.

6.2 CKDM –

- a. Executive Mayor;
- b. Mayco Members who have oversight of municipal entities;
- c. Performance Audit Committee and Audit Committee;
- d. Municipal Representatives; and
- e. Linde Departments of the CKDM.

7. REGULATORY CONTEXT:

7.1 Parent municipalities and municipal entities are governed by Chapter 8A of the Systems Act and in terms of the MFMA, particularly Chapter 10. Where municipal entities are companies, the requirements of the Companies Act must also be considered and applied.

7.2 Section 56 of the MFMA provides for the oversight framework:

“(1) The mayor of a municipality which has sole or shared control over a municipal entity, must guide the municipality in exercising its rights and powers over the municipal entity in a way—

(a) that would reasonably ensure that the municipal entity complies with this Act and at all times remains accountable to the municipality; and

(b) that would not impede the entity from performing its operational responsibilities.”

7.3 Section 93D of the Systems Act requires that the Council of the CKDM must designate a councilor or an official of the CKDM, or both, as the representative or representatives of the CKDM –

- a. To represent the CKDM as a non-participating observer at meetings of the board of directors of the municipal entity concerned;
- b. To attend shareholder meetings; and
- c. To exercise the CKDM's rights and responsibilities as a shareholder.

7.4 The monitoring and oversight exercised over the municipal entities by the CKDM should always be governed by the following principle as found in the municipal legislation set out below:

a. Section 93A of the Systems Act:

“Duties of parent municipalities with respect to municipal entities....

The parent municipality of a municipal entity –

(b) must allow the board of directors and chief executive officer of the municipal entity to fulfil their responsibilities.”

b. Section 56(2) of the MFMA – Exercise of rights and powers over municipal entities:

“In guiding the municipality in the exercise of its rights and powers over a municipal entity in accordance with subsection (1), the mayor may monitor the operational functions of the entity, but may not interfere in the performance of those functions.”

7.5 Section 93E(2) of the Systems Act provides that *“the parent municipality of a municipal entity must, before nominating or appointing a director, establish a process through which –*

- (a) applications for nomination or appointment are widely solicited;*
- (b) a list of all applicants and any prescribed particulars concerning applicants is compiled; and*
- (c) the municipal council makes the appointment or nomination from such list.”*

8. POLICY DIRECTIVE DETAILS:

In accordance with Section 93E(2) of the Systems Act, the following process must be followed in the appointment process for Directors nominated by the CKDM to a board of a municipal entity:

1. The Nominations Committee of the municipal entity, in consultation with the relevant Municipal Representatives shall identify the requirements needed on the board in terms of skills, demographics and diversity.
2. The relevant Municipal Representative (official) must advertise for the recruitment of directors in accordance with the CKDM's requirements.
3. The relevant Municipal Representative (official) must compile a list of all candidates who have applied and create a shortlist of candidates to be interviewed.
4. The relevant Municipal Representative (official) must convene a City selection panel. The panel may include the Members of Mayco responsible for the Municipal Entity, the relevant Executive Director and the relevant Municipal Representatives.
5. The selection panel will interview candidates, agree on the suitable candidates to be nominated for recommendation to the Executive Mayor for appointment.
6. If the advertising process does not produce suitably qualified candidates, the Municipal Representatives may approach suitable candidates directly to be interviewed by the selection panel.

7. The relevant Municipal Representative (official) must ascertain whether successful candidates are fit and proper and whether they are not disqualified from being directors in terms of section 93F of the Systems Act, the Companies Act and the King Code on Corporate Governance before submitting the name of the suitable candidates to the Executive Mayor.
8. Once the Executive Mayor has approved the recommendation for appointment on the boards of various municipal entities, such decision will be communicated and the list of newly appointed directors provided to boards of directors for formal appointments.
9. The relevant Municipal Representative (official) shall maintain a database where all the details of the shortlisted candidates will be kept for a period of two years for the possible future appointment to the boards of municipal entities. The CKDM may utilize any names on the database for future appointments.

9. DESIGNATED MUNICIPAL REPRESENTATIVES:

- 9.1 The Executive Mayor may designate a councilor or an official, or both, as a municipal representative for a municipal entity.
- 9.2 The Executive Mayor may instruct the municipal representatives on how to exercise the rights and responsibilities of the CKDM as shareholder at shareholder meetings.
- 9.3 The Municipal Representative/s must –
 - a. attend board meetings of municipal entities and represent the Council as a non-participating observer/s;
 - b. give feedback to the CKDM on the discussions and any decisions taken at board meetings;
 - c. not participate in any decision making by the board of directors;

- d. attend any shareholder meetings and exercise the rights and responsibilities of a parent municipality as a shareholder and in this respect vote as instructed by the Executive Mayor. The municipal representative (official) must submit a report to the Executive Mayor before any shareholder meeting of a municipal entity to obtain the Executive Mayor's mandate in this regard;
- e. represent the CKDM faithfully at shareholder meetings, without consideration of personal interest or gain;
- f. inform the Council in a report format of how voting rights were exercised at shareholder meetings;
- g. inform the Council in a report format of all relevant actions taken on its behalf at shareholder meetings;
- h. ensure that all issues of concern or queries raised by the municipal entity and affecting the CKDM are attended to and resolved by the line departments within the CKDM;
- i. bring to the attention of the CKDM any non-compliance issues in respect of service delivery agreements or strategy alliance with the CKDM, if such issues are raised at board meetings;
- j. ensure that the relevant mayoral committee members are kept up to date with any new developments taking place within the municipal entities;
- k. be accountable to the Executive Mayor.

9.4 The municipal representative may, in terms of Section 93D(3)(b)(ii) of the Systems Act, be reimbursed for expenses in connection with his or her duties as a municipal representative, but may not receive any additional compensation or salary for such duties.

9.5 Municipal Representatives may attend board committee meetings if invited by the municipal entity.

10. PERFORMANCE MANAGEMENT AND BUDGETING:

- 10.1 The relevant Municipal Representatives (official) must undertake an annual assessment of the performance of the municipal entity in respect of its approved business plan for the previous financial year based on agreed indicators.
- 10.2 The Executive Mayor is authorized to approve the key financial and non-financial performance objectives and measurement criteria of each municipal entity and must ensure that these align with the IDP. Any amendment to key performance objectives requested by the board of a municipal entity during a financial year may be authorized by the Executive Mayor.
- 10.3 The CKDM's Chief Financial Officer or his/her nominee is authorized to make recommendations and refer back any proposed budget amendments to each municipal entity as required by Section 87(2) of the MFMA. The amended budget and business plan submitted by a municipal entity must be assessed against the recommendations made by the CKDM's Chief Financial Officer before submission to full council.
- 10.4 The relevant Municipal Representative (official) must ensure that each municipal entity completes a quarterly Performance Assessment, including the Mid-Year review, which will form part of the CKDM's SDBIP reporting processes.
- 10.5 The Performance Audit Committee may request the attendance of the Chief Executive Officer of a Municipal Entity to attend any meetings of the Committee to answer any performance related questions.
- 10.6 The relevant Municipal Representative (official) must ensure that the municipal entities meet their in year reporting requirements as required by the MFMA and the Regulations on Budgeting and Reporting.

11. DELEGATION BY MUNICIPAL REPRESENTATIVE (OFFICIAL):

The relevant Municipal Representative (official) may delegate any power or authorization conferred on him/her in terms of this Policy to any person reporting directly to him/her, including powers and authorizations of a municipal representative.

12. IMPLEMENTATION PROGRAMME:

The amended policy will replace its former version upon approval by Council.

13. MONITORING, EVALUATION AND REVIEW:

The Policy will be reviewed annually by the Chief Financial Officer.