



Policy Brief

ISS Head Office

Block C, Brooklyn Court, 361 Veale Street, New Muckleneuk, Pretoria, South Africa

Tel: (27-12) 346 9500 • Fax: (27-12) 460 0998 • E-mail: pretoria@issafrica.org • www.issafrica.org

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IMPLEMENTING FINANCIAL DISCLOSURE IN LOCAL GOVERNMENT Compliance among councillors

Collette Schulz-Herzenberg, Shireen Mukadam and Jamy Felton

This policy brief is the third in a four-part series designed to assist municipal staff and elected councillors in South Africa manage and detect conflicts of interests in public life. The purpose of the series is to support effective implementation of financial disclosure regulations by reflecting on institutional good practice, lessons learnt, and providing practical advice and recommendations.

The validity of a financial disclosure framework depends on the submission of financial disclosure forms by councillors. For declarations to have an effect the information must be submitted in a timely and comprehensive manner. When councillors fail to submit declarations of interest it is impossible to exercise oversight over their conduct and detect potential conflicts of interest. Non-compliance renders the entire monitoring and oversight process ineffective.

This policy brief addresses the issue of compliance of financial disclosure among South Africa's local councillors and provides recommendations on how to improve the submission process.

LEGAL REQUIREMENTS FOR COMPLIANCE

Municipal councillors are required to declare their financial and non-financial interests when they are elected to office following elections, and thereafter on an annual basis when there are changes to their interests. The Code of Conduct contained in the Municipal Systems Act states as follows:

THE MUNICIPAL SYSTEMS ACT 2000: Schedule 1, 7

Declaration of interests:

7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor

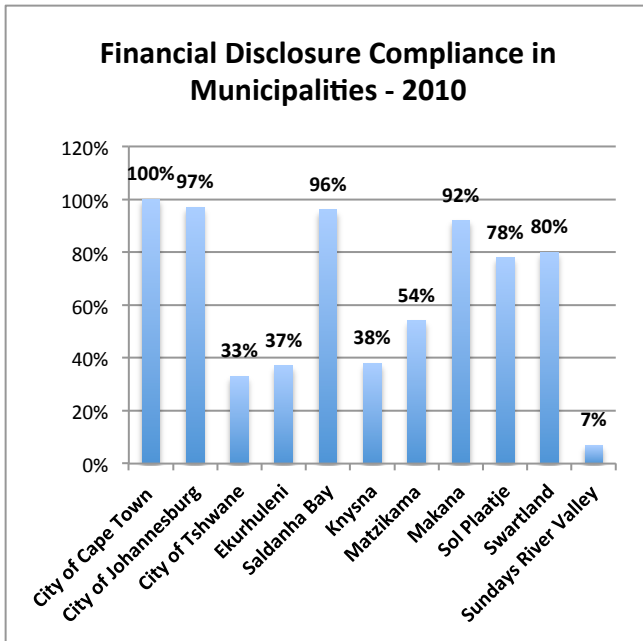
(2) Any changes in the nature or detail of the financial interests of councillor must be declared in writing to the municipal manager annually.

This stands in contrast to requirements for annual disclosure for elected officials at national and provincial levels of government, where elected representatives are required to declare their interests on an annual basis irrespective of whether there are changes to their private interests.

The ambiguous nature in the legislation regarding annual disclosure has resulted in a varied approach to compliance across municipalities, with some insisting their local councillors declare their interests each year, while other institutions require councillors to declare their interests following their election into office, and thereafter, only declare once a change in their financial interests or assets has occurred. In the latter instance, it results in many of these councillors only submitting declarations of interests once during their five-year tenure.

COMPLIANCE LEVELS ACROSS MUNICIPALITIES

Research conducted by the Institute of Security Studies (ISS) found significant variations in compliance levels across municipalities. In 2010 a sample of 11 municipalities (including 4 metros) shows that only one institution, the City of Cape Town, met the required 100% compliance rate, while the City of Johannesburg achieved 97% compliance.



The extent of the variation in compliance across municipalities is illustrated in the above graph. Saldanha Bay municipality achieved 96% with 22 of its 23 local councillors submitting declarations. In contrast, Sunday's River Valley achieved only 7% compliance where only 1 out of 14 councillors declared his interests.

Declarations of interests by newly elected councillors following the 2011 municipal elections suggest a marked improvement in compliance levels in many municipalities. In 2011, from a sample of 9 municipalities, 6 achieved 100% compliance. The higher compliance levels might be attributable to the holding of local elections in that year since the legislation requires declarations to be made by councillors within 60 days following an election. In some institutions, however, the ISS found that declarations were not submitted within 60 days after the election, suggesting that even when 100% compliance is met it is not always done in a timely manner.



CHALLENGES FOR COMPLIANCE

Apart from non-compliance, a range of other factors can aid, or undermine, satisfactory compliance and are dealt with as follows:

- **Timing of submissions**

Councillors are required to submit their declarations timeously to ensure a successful disclosure regime. Irregular and overdue submissions that fail to meet the submission deadline render the information unavailable for oversight and monitoring by staff and the public.

- **Incomplete or poor quality information**

Accountability relies on full and accurate declarations of interests. In practice, however, incomplete declaration records raise the question as to whether the councillor has fully declared their interests and assets. Poor quality information undermines the integrity of the information. The difference in quality between handwritten and typed disclosure forms is apparent, with hand-written records being very difficult to comprehend. Moreover, spelling mistakes regarding company names are common. All these factors can contribute to compromising the quality of the data, and undermine the chances of detecting conflicts of interest.

- **Poor internal communication**

In some institutions, submission deadlines are not met due to a lack of communication to councillors of submission deadline dates by the staff of municipalities tasked with the implementation of the disclosure framework.

Addis Ababa Office

5th Floor, Get House Building
Africa Avenue
Addis Ababa
Ethiopia
Tel: (251-11) 515 6320
Fax: (251-11) 515 6449
E-mail: addisababa@issafrica.org

Cape Town Office

2nd Floor, The Armoury
Buchanan Square
160 Sir Lowry Road
Woodstock, South Africa
Tel: (27-21) 461 7211
Fax: (27-21) 461 7213
E-mail: capetown@issafrica.org

Dakar Office

4th Floor, Immeuble Atryum
Route de Ouakam
Dakar
Senegal
Tel: (221-33) 860 3304/42
Fax: (221-33) 860 33 3
E-mail: dakar@issafrica.org

Nairobi Office

Braeside Gardens
off Muthangari Road
Lavington
Nairobi, Kenya
Tel: (254-20) 266 7208
(254-20) 266 7198
E-mail: nairobi@issafrica.org

Pretoria Office

Block C, Brooklyn Court
361 Veale Street
New Muckleneuk
Pretoria, South Africa
Tel: (27-12) 346 9500
Fax: (27-12) 460 0998
E-mail: pretoria@issafrica.org

RECOMMENDATIONS

✓ Legislative amendment

The Municipal Systems Act does not clearly stipulate whether councillors' declarations need to be submitted annually, irrespective of changes to the nature of their private interests. The legislation should be amended to provide clarity in this regard to ensure uniformity across municipalities. It is recommended that annual disclosure becomes mandatory for all local government officials, as is the case at provincial and national levels.

✓ Electronic submissions

Municipalities are encouraged to introduce an online submission facility. This will ensure a user-friendly portal for users and timely and comprehensible submissions. It will also assist municipalities to improve compliance levels.

✓ Improved communication

All councillors and staff should remain informed of submission deadlines and processes to prevent non-compliance. Senior council members, including Speakers, can support compliance by submitting and encouraging councillors to meet their public duties.

✓ Training and capacity building

Training for councillors can help clarify the importance of, and commitment to, the financial disclosure framework and its regulatory procedures and deadlines.

✓ Monitoring and oversight

Municipalities should strengthen their monitoring and oversight mechanisms so that non-compliance can be quickly identified and measures can be taken to assist the councillor to remedy the situation.

✓ Enforcement of penalties for non-compliance and late submissions

Municipalities are encouraged to enforce penalties and sanctions for late submissions and non-compliance, especially for repeat offenders. Sanctions and penalties provide an incentive for councillors to submit on time, especially if the repercussions of their actions include a financial penalty (either a fine or a percentage of their income deducted) or the loss of benefits. When councillors believe that their institutions do not take ethical conduct and integrity seriously they will fail to commit to the principles that underpin the financial disclosure framework for public officials.

Public accountability relies on accurate and timely disclosure