



**UMZIMVUBU**  
— LOCAL MUNICIPALITY —

## **DRAFT LITIGATION MANAGEMENT POLICY**

## Summary

<b>Publication Date</b>	
<b>Review Date</b>	
<b>Related Legislation/Applicable Section of Legislation</b>	<ul style="list-style-type: none"> <li>• The Constitution of the Republic of South Africa, 1996, Act No 108 of 1996;</li> <li>• Labour Relations Act, 1995 (Act No.66 of 1995) as amended</li> <li>• Basic Conditions of Employment Act (Act 75 of 1997) as amended by Act 20 of 2013</li> <li>• Employment Equity Act (Act 55 1998) as amended by Act 47 of 2013</li> <li>• Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000)</li> <li>• Promotion of Access to the Information Act , 2000(Act No 2 of 2000)</li> <li>• Promotion of Equity and Prevention of Unfair Discrimination Act (Act No 4 of 2000)</li> <li>• Intergovernmental Relations Framework Act, 2005</li> <li>• Institution of legal proceedings against certain organs of State, 2002 ( Act No. 40 of 2002)</li> <li>• Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)</li> </ul>

	<ul style="list-style-type: none"> <li>Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)</li> <li>Local Government: Municipal Finance Management Act 2003 (Act No.56 of 2003)</li> </ul>
<b>Related Policies, Procedures, Guidelines, Standards, Frameworks</b>	None
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<b>Policy Sponsor (Name/Position)</b>	N/A
<b>Department Responsible</b>	<i>Office of the Municipal Manager</i>
<b>Unit responsible</b>	<i>Office of the Municipal Manager</i>
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## REVISION RECORD

Date	Version	Revision Description

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# LITIGATION MANAGEMENT POLICY

## 1. INTRODUCTION AND BACKGROUND

The entrenchment of the rule of law as the founding value in the Constitution imposes an obligation on an organ of State to take action or make decisions only when authorized by law do so. All decisions or actions of the organs of State are, in line with the doctrine of separation of powers and checks and balances susceptible to a judicial review.

Accountability and transparency are one of the values that are key to the functioning of local government. It is because of these values that one of the objects of local government is to provide democratic and accountable government for local communities.

Fundamental in these constitutional values is the need for legal compliance by and within organs of State. Poor levels of or lack of compliance with legislative prescripts eventually manifests itself in litigation and consequently unnecessary expenditure in litigation costs and legal fees.

It is because of this background that the State is the biggest consumer of legal services in the Republic. Consumption of legal services includes participation in litigation whether for or against organs of State.

It is therefore imperative to ensure transition from reactive litigation management into proactive legal risk management by promoting legal compliance.

This policy is therefore intended to assist the Umzimvubu Local Municipality to promote a culture of accountability, transparency and respect for the rule of law by so doing mitigating the calamitous effects of litigation in the municipality.

## 2. DEFINITIONS AND ABBREVIATIONS

<b>Term</b>	<b>Meaning</b>
<b>Accounting Officer</b>	Refers to the Municipal Manager of the Umzimvubu Local Municipality
<b>Act</b>	The Local Government: Municipal Systems Act, 32 of 2000 as amended from time to time.
<b>Council</b>	The Municipal Council of the Umzimvubu Local Municipality or any duly authorised Committee or official of the said Council.
<b>Municipality</b>	Means the Municipality, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent or any employee acting in connection with this policy by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
<b>Municipal Legal Officer</b>	Refers to the Officer designated to administer Legal Services of the Umzimvubu Local Municipality.
<b>ADR</b>	Alternative Dispute Resolution
<b>IGR/F</b>	Intergovernmental Relations/ Framework
<b>MFMA</b>	Municipal Finance Management Act
<b>MSA</b>	Municipal Systems Act
<b>MOMM</b>	Manager in the Office of the Municipal Manager

### **3. PURPOSE**

In recognition of the underlying National, Provincial and Local Policy Frameworks, the municipality has therefore developed its litigation policy with the main purpose being:

- To ensure that any litigation against the municipality is handled in an efficient manner taking into account all costs and value for money, which would include prompt instructions to the instructed legal practitioners; early preparation for hearings; thorough consultations etc.
- To pursue alternative dispute resolution (ADR) as a mechanism to respond to litigation, minimise costs and further foster peaceful co-existence and amicable settlement between the warring parties.
- To ensure that judgments for and against the municipality are promptly and properly responded to, either by noting an appeal or giving guidance in compliance with the Court order.
- To ensure that procurement of legal practitioners by the municipality is done in accordance with a system, which is fair, equitable, transparent, competitive and cost-effective.

### **4. APPLICATION AND SCOPE**

This policy shall apply to all Councillors and Employees of the Umzimvubu Local Municipality, in particular those directly involved in litigation management.

### **5. LITIGATION MANAGEMENT PRINCIPLES**

In recognition of the abovementioned National, Provincial and Local Policy Frameworks, the municipality undertakes to promote the following principles:

- 5.1. Respect for the rule of law



The municipality acknowledges that as an organ of State, it must obey the law and that its functionaries cannot exercise power unless authorized by law. Any decision or conduct taken by an unauthorized functionary may be declared null and void and set aside through litigation.

#### 5.2. Accountability and Transparency

The municipality as an organ of State must be accessible and that it must be able to respond to the people. The duty of accountability requires an organ of State to be able to explain its actions and decisions when required to do so.

It is further acknowledged that failure to observe principles of accountability and transparency may result in litigation.

#### 5.3. Fairness

The municipality commits to observe a fair procedure when dealing with individuals and members of the public in general as imposed by the Constitution and legislation.

It is acknowledged that decisions of local government are reviewable in Court and therefore observing a fair procedure is imperative and is a measure to mitigate incidents of litigation.

#### 5.4. Professionalism

The staff that is entrusted to handle litigation is expected to maintain a high standard of professional ethics.

#### 5.5. Value for money

In relation to litigation management, the principle of value for money relates to the local government's commitment to the principle of rule of law thus avoiding unnecessary litigation. It also refers to ensuring that legal practitioners that are instructed carry out the mandate in a competent and timely manner.

## **6. ROLES & RESPONSIBILITIES**

### **6.1. Municipal Council**

In terms of the Constitution, the executive authority of a municipality is vested in its Municipal Council. A decision to institute legal action or defend it is vested in the Municipal Council, unless that authority is delegated in writing to a relevant official in terms of section 59 of the Local Government: Municipal Systems Act (MSA).

### **6.2. Accounting Officer**

The MFMA and its regulations prescribe specific powers to the Accounting Officer. Consequently, it is the responsibility of the accounting officer to ensure that the Municipal litigation management is in accordance with this framework.

The municipal council to delegate the Accounting Officer to initiate, defend or oppose litigation matters.

### **6.3. Municipal Legal Advisory Services**

The municipality must have its own in-house legal personnel. Management of litigation of the municipality is the responsibility of the Municipal Management duly assisted and advised by an appointed Municipal Legal Officer. Professional staff of municipal legal advisory services must have necessary competencies, qualifications, expertise, practical knowledge of litigation process, and must be persons who qualify to practice as Legal Practitioners in terms of the Legal Practice Act 28 of 2014.

It is imperative for the municipality to adequately capacitate legal advisory services personnel to deal with complex matters in their handling of litigation. A regular review of human capacity is thus essential.

<b>Role</b>	<b>Authority</b>
Create, evaluate, review and adopt the policy.	Council
<ul style="list-style-type: none"> <li>• Implement and enforce this policy</li> <li>• Establish and control the administration necessary to fulfil this policy, and report efficiently and regularly to the Council in this regard.</li> </ul>	Municipal Manager
<ul style="list-style-type: none"> <li>• Ensure that there is compliance with the policy.</li> </ul>	Municipal Legal Officer

## **7. LITIGATION PROCESS**

Litigation is regulated by the rules of the relevant court and requires strict adherence to time limits in order to avoid adverse orders/judgments and punitive cost orders.

- 7.1. Court papers/processes must upon receipt be referred to the Office of the Municipal Manager, which office shall immediately direct the papers to the Municipal Legal Officer who must ascertain whether the rules of the court and prescribed time frames have been adhered to.
- 7.2. The Municipal Legal Officer must immediately initiate contact with the relevant department in order to receive necessary information, which will be used to formulate an advice to the accounting officer and / or municipal council on whether or not an application or action must be opposed or defended. In appropriate circumstances, the Municipal Legal Officer may hold a consultation with the relevant department.

- 7.3. In circumstances where the court papers or processes received are of an urgent nature as prescribed by the rules of the court in which such process or papers were issued, the Municipal Legal Officer shall, after consulting the MOMM and the Accounting Officer, refer the matter to an external legal practitioner who forms part of the Municipality panel of legal practitioners.
- 7.4. Relevant departments of the municipality must adhere to time periods as may be prescribed by the Municipal Legal Officer and must at all times avail themselves when information is requested. Upon receipt of requested information, the Municipal Legal Officer must request instructions from the Accounting Officer or Municipal Council on whether or not the matter must be opposed or defended.
- 7.5. The request of instruction must at least explain to the Accounting Officer the following:
- (a) The cause of action;
  - (b) The relief sought against the Municipality;
  - (c) Advice on the prospects of success if the matter is defended or opposed;
  - (d) Any possibilities to initiate alternative dispute resolution mechanism;
  - (e) Recommendations.
- 7.4. On receipt of instructions from the Accounting Officer or Municipal Council, the Municipal Legal Officer will prepare formal instructions to a legal practitioner as may be prescribed in the database. All legal processes, notices related to the matter shall be handled by the legal practitioner once they have been instructed in writing.
- 7.5. The Municipal Legal Officer will regularly liaise with the Municipal Manager/MOMM on the matter and provide necessary updates to the Municipality. It is also the responsibility of the Municipal Legal Officer to ensure that responsible officials are available for further consultations and provision of further information and documentation as may be required by the legal practitioner in brief.

- 7.6. In appropriate circumstances, the Municipal Legal Officer may, together with the legal practitioner on brief as well as the representative of the relevant department, attend all court hearings and pre-hearing conferences related to the matter.
- 7.7. At the conclusion of the matter, the Municipal Legal Officer must, after receipt of a comprehensive report on the outcome of the matter together with the judgement from the legal practitioner on brief, prepare a report to the Accounting Officer and/or Council setting out the outcome of the matter and its implications.

## **8. LITIGATION REGISTER**

- 8.1. The Municipal Legal Officer must develop and maintain a register of all litigation matters in which the municipality is involved.
- 8.2. The register shall include at least the following information:
  - (a) The court where the matter was or is to be heard;
  - (b) The case number;
  - (c) The names of the parties;
  - (d) The type of litigation;
  - (e) The amount involved.
- 8.3. The Municipal Legal Officer shall make the litigation register available as and when required by the Management of the Municipality and various intergovernmental stakeholders.

## **9. LITIGATION RISK ANALYSIS**

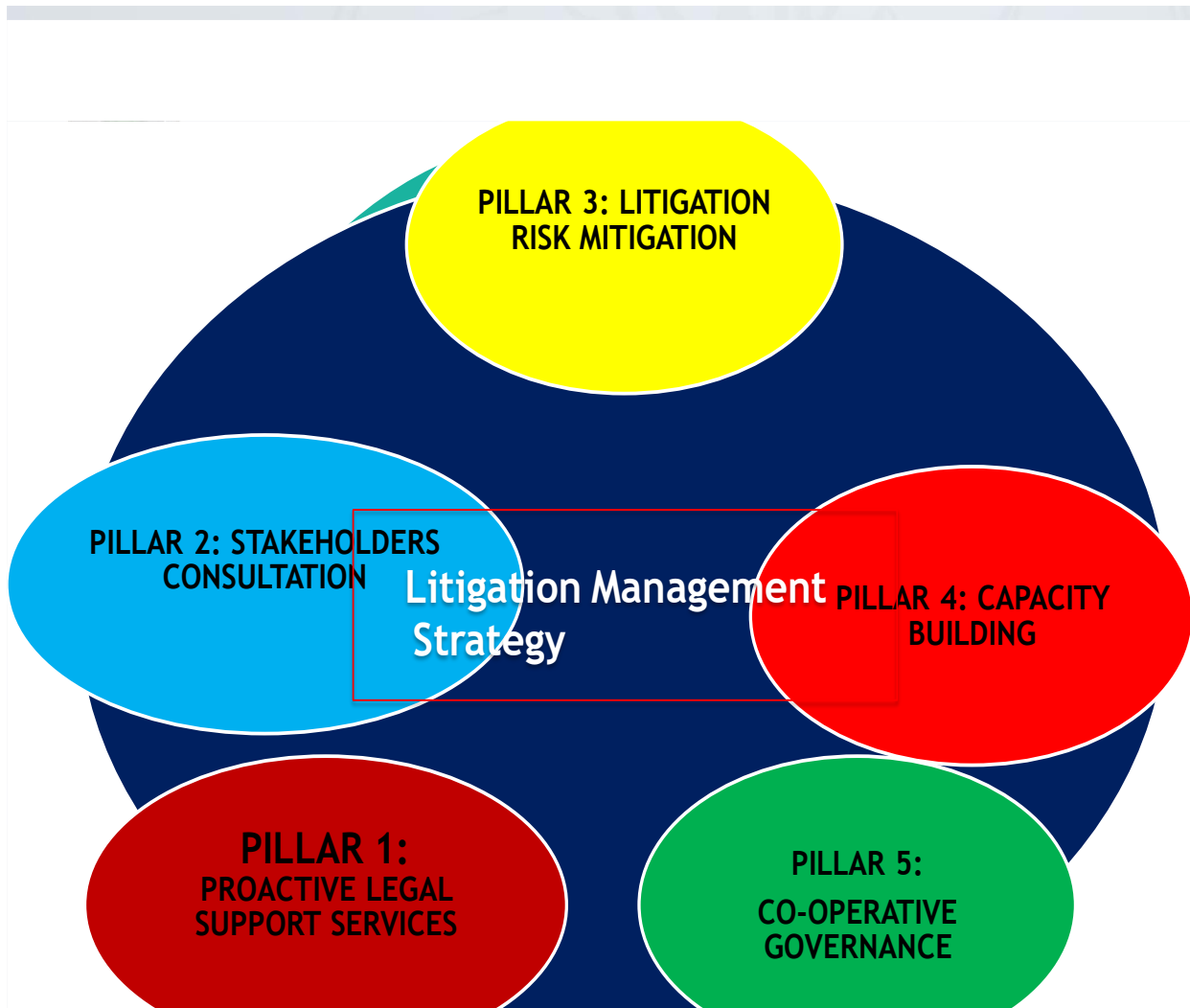
- 9.1. The Municipal Legal Officer must conduct annually an analysis of risk factors pertaining to the department's litigation. The risk analysis must assist in the tracking of litigation trends and factors that contribute to the identified trends.

- 9.2. The analysis should also identify potential risks, and propose measures to mitigate these risks. To ensure the credibility and authenticity of the analysis, Risk Management Unit will take the lead in the compilation of the final risk analysis document.

## **10. IMPLEMENTATION OF COURT ORDERS**

- 10.1. Compliance with court orders is highly regulated by legislation. Thus in terms of section 165(5) of the Constitution, an order or decision issued by a court binds all persons to whom and organs of state to which it applies.
- 10.2. It is important to note that failure to comply with a court order may have serious implications because the judgment creditor may instruct the Sheriff of the Court to attach the municipal property.
- 10.3. The Municipal Legal Officer must, upon receipt of a court judgment advise the Municipal Manager about its implications and facilitate compliance with it unless the municipality decides to appeal against it. The responsibility to comply with the Court Order rests with the Municipal Council or Accounting Officer if delegated as such.
- 10.4. A decision to appeal must be taken within the prescribed timeframes of the relevant court. The Legal Practitioner on brief shall be responsible for advising the municipalities about the deadlines that apply.

## 11. LITIGATION MANAGEMENT STRATEGY



## 12. LITIGATION AGAINST OTHER ORGANS OF STATE

12.1. In terms of section 41(1)(h)(vi) of the Constitution all spheres of government and organs of state within each sphere must co-operate with one another in mutual trust and good faith by avoiding legal proceedings against one another.

12.2. Section 40(1) of the Intergovernmental Relations Framework Act further states that all organs of state must make every reasonable effort to avoid

intergovernmental disputes when exercising their statutory powers or performing their statutory functions and to settle intergovernmental disputes without resorting to judicial proceedings.

12.3. Municipalities consequently have a duty to avoid litigation against other organs of state and may not resort to judicial proceedings unless the IGR processes that are prescribed in the IGR Act have been exhausted.

12.4. It is worth to note that the provisions of IGR Act, do not apply to the settlement of specific Intergovernmental Disputes in respect of which other national legislation provides resolution mechanisms or procedures or to a dispute concerning an intervention in terms of section 100 or 139 of the Constitution.

12.5. A municipality may however resort to judicial proceedings without having to exhaust the provisions of the IGR Act, if the procedures contemplated by IGR Framework Act will be time consuming and that for purposes of a particular case, following the procedures will deny effective redress to the municipality. A further reason to allow departure from the dispute resolution mechanism prescribed by IGR Framework Act is when the lawfulness of an organ of state's conduct needs to be determined.

### **13. MONITORING, EVALUATION & REVIEW**

A report detailing the progress with the implementation of this Litigation Management Policy with specific reference to achievement of this policy has to be compiled every year by the person with the responsibility for implementation and monitoring. The policy must be made available to all consulting parties for perusal and comment and must be circulated to all staff members by means of circulars, notices and notice boards.



**14. SUPPORTING DOCUMENTS, REFERENCES & APPENDICES**

- SUPPORTING DOCUMENTS
  - None
- REFERENCES
  - None
- APPENDICES
  - None

**EFFECTIVE DATE** .....2022

**Developed By:**

**Legal Officer** .....

**Signature** .....

**Date** .....

**Recommended By:**

**Municipal Manager**.....

**Signature** .....

**Date** .....

**Authorised By:**

**Speaker**.....

**Date**.....