

1. Introduction

The MFMA is implemented through a phased-in approach to allow municipalities ample time to familiarise and re-organise themselves to fully implement the reforms envisaged in the act. The implementation date for each section and the classification of municipalities into high, medium and low capacity were published in Government Gazette 26510 and 26511.

In addition to the MFMA, certain regulations and circulars are issued to supplement the provisions of the Act. Although regulations carry the same authority as the act itself, the circulars are only intended as guidance – it will only be binding on the municipality if adopted by council resolution. At the date of preparing the handbook, only regulations pertaining to the investment framework and the supply chain management process have been gazetted, however more regulations are expected shortly.

This chapter does not aim to provide a comprehensive discussion of all requirements pertaining to the management and administration of a municipality; but rather to provide only a strategic overview of those requirements that will influence the performance of the chief financial officer's duties. Furthermore, this section does not aim to provide an overview of legislation that is not solely applicable to municipalities or municipal entities such as the Income Tax Act. Where further guidance is required, reference should be made to the specific legislation.

2. Nature, rights and duties of municipalities

(MSA Chapter 2)

As a separate legal entity within the local sphere of government, municipalities function within their own geographical area in accordance with the political, statutory and other relationships between its political structures, its political office bearers, its administration and its community.

The administration of the municipality is governed by the Constitution which establishes the duty to be responsive to the needs of the community and facilitate a culture of accountability by implementing appropriate measures to enhance transparency.



The council of a municipality has the *right* to apply its own initiative in exercising executive and legislative authority set forth by the Constitution and legislation without improper interference. However, the council has the *duty* to utilise the resources of the municipality in the best interest of its community by providing sustainable municipal services in a manner that is democratic, free of prejudice and transparent.

Members of the local community have the *right* to contribute to the decision-making processes of the municipality, being consulted on the level, quality, range and impact of services provided by the municipality as well as to receive full and accurate information of the state of municipal affairs and decisions taken by the council or administration of the municipality. In exchange for these rights, the community has a *duty* to become involved in the processes and mechanisms of the municipality, allow municipal officials reasonable access to their property and promptly pay for services received as well as other rates and fees imposed by the municipality.

3. Municipal powers and functions

(MStA Chapter 1 & 5)

Legislation provides for three types of municipalities – category A (metropolitan), category B (local) and category C (district) municipalities.

Generally, a geographical area with areas of high density population, multiple business districts and industrial areas with a strong linkages between the constituent units for which integrated development planning is desirable, is regarded as a metropolitan area. Such an area will only have a single metropolitan municipality.

Any other geographical area that does not have the above characteristics will have both a district and local municipality, except where it is not practical to establish a local municipality in which case a district management area must be established.

A municipality has the powers and functions assigned to it in terms of sections 156 and 229 of the Constitution. These powers and functions have been listed in Schedule 4 and 5 of the Constitution. Schedules 4 and 5 set out the sole competencies and



assignment of powers and functions of the three spheres of government, as well as those competencies that are shared with other spheres.

Municipalities can therefore only carry out those powers and functions that assigned to local government, whether solely or jointly with another sphere of government.

Municipal government is defined in terms of the following executive authorities –

- Collective executive system – executive leadership is vested in an executive committee;
- Mayoral executive system – executive leadership is vested in an executive mayor, assisted by a mayoral committee;
- Plenary executive system – executive authority is limited to the council itself;
- Sub-council participatory system – delegated powers are exercised by sub-councils established for parts of the municipality; and
- Ward participatory system – matters of local concern to wards are dealt with by ward committees.

Metropolitan municipalities could have either a collective, mayoral or plenary system in combination with sub-council and/or ward participatory systems. District municipalities can only have either a collective, mayoral or plenary executive system, whereas local municipalities can combine one of the three main executive systems with a ward participatory system.

The powers and functions assigned to the different categories of municipalities are set out in sections 156 and 229 of the Constitution. In general district municipalities are responsible for the integrated planning and promotion of infrastructural development for the district as a whole, as well as capacity building and the equitable distribution of resources amongst the local municipalities in its area. The powers and functions assigned to a local municipality by the Constitution include the imposing rates on properties and charging of fees for services rendered.

The following functions can be exercised by the district and/or local municipality, depending on the circumstances prevalent in the district area:

- supply of water, electricity, sewerage purification works, refuse disposal sites and roads;



- regulation of passenger transport services, including airports;
- provision of municipal health and fire fighting services;
- establishment and control of fresh produce markets, abattoirs and cemeteries;
- promotion of local tourism; and
- provision of municipal public works

A district municipality and the local municipalities within its area should assist and support one another by providing financial, technical and administrative support where needed.

4. Local public administration

(MSA Chapter 7)

A municipality must within its administrative and financial capacity establish and organise itself in a manner that will enable it to:

- be responsive to the needs of the community;
- facilitate a culture of public service and accountability;
- be performance orientated;
- perform its functions in an operationally effective manner;
- assign clear responsibilities for management;
- maximise efficiency of communication and decision-making;
- delegate responsibility to the most effective level; and involve staff in management decisions

5. Financial management responsibilities

(MFMA Chapters 7, 8 & 9, MSA Chapters 7 & 9)

5.1 Municipal Council

The Constitution recognises the Council as the highest authority in the municipality. The MFMA enforces this recognition by vesting it with significant powers of approval and oversight. Councillors provide the critical political linkage between the mayor (or mayoral committee) and the community. They are therefore best positioned to facilitate the consultative processes prescribed by legislation, particularly with regards to budgets, the IDP, budget-related policies, tariff setting, indigents and borrowings.



Through the MFMA and MSA, the role of Council has been expanded to include an oversight role, therefore requiring the separation of their responsibility for developing and formulating policies from the implementation thereof.

In terms of the MFMA, Council is responsible for a number of financial management tasks, which include the following:

- Approval of annual budget and budget-related policies, as well as ensuring the alignment thereof with the IDP;
- Consulting with community and government on important matters
- Reviewing the performance of the municipality and municipal entities in terms of budget implementation;
- Dealing with audit and annual reports;
- Considering capital projects and taking responsibility for incurring debt

5.2 Mayors

In general, the mayor of a municipality is responsible for providing political guidance over the fiscal and financial affairs of the municipality. In doing so, the mayor may monitor and oversee the exercising of responsibilities assigned to the accounting officer and chief finance officer, without interfering in the performance of their duties and functions.

Within 30 days of the end of each quarter, the mayor is expected to submit a report to council on the implementation of the budget and the state of financial affairs. The mayor is also responsible for providing political guidance over the budget process and the priorities that must guide the preparation of the budget, as well as the revision of the integrated development plan and the approval of the service delivery and budget implementation plan (circular 28 to the MFMA provides a summary of the key budget processes and timeframes that should be followed during the budget cycle).

Furthermore, the mayor is responsible for monitoring budgetary control, the early identification of financial problems and reporting thereof to the MEC.



The mayor must guide the municipality in its dealings with municipal entities to ensure that they remain accountable to the municipality and comply with the Act without impeding the entity from performing its operational responsibilities.

5.3 Accounting officer

The municipal manager as accounting officer of the municipality is required to act with honesty and in the best interest of the municipality and disclose all material facts that may influence the decisions of council. The accounting officer may also not use his/her position, privileges or information for personal gain.

Apart from the fiduciary responsibilities discussed above, the municipal manager is responsible for the:

- effective, efficient and economical utilisation of resources;
- maintenance of full and proper records of financial affairs;
- implementation and maintenance of financial and risk management, internal control systems, including the internal audit function
- prevention of unauthorised, irregular, fruitless and wasteful expenditure;
- institution of disciplinary or criminal proceedings when required; and
- implementation of a tariff, rates, credit control and debt collection as well as supply chain management policy.

The accounting officer is responsible for and must account for all bank accounts of the municipality including any relief or trust funds.

Other responsibilities include asset, liability, revenue and expenditure management. The specific duties in terms of these responsibilities can be summarised as follows:

a) Asset and liability management

The successful management of assets (i.e. property, plant and equipment, debtors, inventory, etc.) and liabilities (creditors, long-term loans, etc), including the safeguarding and maintenance of assets, is dependent on the following actions:



- the maintenance of a management, accounting and information system that accounts for all assets and liabilities,
- the valuation of assets and liabilities in accordance with standards of generally recognised accounting practice, and
- the maintenance of an internal control system

b) *Revenue management*

Revenue management is based on the following elements:

- monthly calculation of revenue due and payable
- regular preparation (i.e. monthly) of accounts for rates and service charges
- prompt depositing of money received;
- management, accounting and information system that recognises revenue when it is earned and accounts for debtors and the receipting of cash;
- effective system of internal control over debtors and revenue
- reconciliations of revenue at least weekly, e.g. comparison to budget, debtor analysis and analysis of distribution losses;
- funds collected on behalf of other organs of state are transferred at least weekly and not used for the municipality's own purposes.

c) *Expenditure management*

To ensure the effective and efficient management of expenditure, the accounting officer is responsible for the following:

- an effective system for the approval and authorisation of expenditure, withdrawals and payment of funds;
- a management, accounting and information system which accounts for expenditure when it is incurred, creditors and payments made by the municipality;
- the maintenance of and compliance with the system of internal control in respect of creditors and payments;
- ensuring that payments are made directly to the person to whom it is due, either electronically or by way of non-transferable cheque;
- payment of amounts owed by the municipality within 30 days of receiving the invoice



- compliance with tax, levy, pension, medical, audit and other statutory commitments;
- a working capital management system in accordance with the cash management and investment framework;
- developing a supply chain management policy is fair, equitable, transparent, competitive and cost-effective.

d) *Budget preparation and implementation*

The accounting officer must provide the mayor with administrative support, resources and information necessary for the mayor to perform his/her responsibilities in respect of the budget preparation process.

As part of the accounting officer's revenue and expenditure management responsibilities, the accounting officer must take all reasonable steps to ensure that revenue and expenditure are properly monitored. Any impending shortfalls in budgeted revenue and/or overspending on the approved budget must be reported in writing to the council.

e) *Monthly budget reporting*

The following information, pertaining to the specific month and financial year to date, has to be reported to the mayor and provincial treasury within 10 working days after the end of each month:

- actual revenue per source
- actual borrowings
- actual expenditure per vote
- actual capital expenditure per vote
- amount of allocations received, and
- actual expenditure on those allocations (excluding expenditure on equitable share) unless exempted by the Division of Revenue Act.

The actual amounts reported each month should be compared to the amounts approved in the budget and explanations on material variances, as well as corrective steps taken, must be provided. The report should also include monthly



and year-to-date amounts, as well as projections of revenue and expenditure for the remainder of the financial year.

f) *Mid-year budget and performance assessment*

The performance of the municipality during the first six months of the financial year must be reported no later than 25 January. This assessment has to be based on the monthly budget reports (refer to above paragraph), actual service delivery performance against the targets set in the service delivery and budget implementation plan, problems identified in the prior year annual report and the performance of municipal entities under control of the municipality. The report should also recommend revised projections for revenue and expenditure to the extent that it is considered necessary.

5.4 Chief financial officer

As part of the top management and the administrative authority of the budget and treasury office, the functions and responsibilities of the chief financial officer stipulated by the MFMA can be summarised as follows:

- administrative authority of the budget and treasury office;
- assisting the accounting officer perform his/her financial management responsibilities;
- assisting the accounting officer in the administration of the municipality's bank accounts and implementation of budget;
- advising senior managers in the exercise of duties assigned or delegated to them; and
- performing such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may be delegated by the accounting officer.

5.5 Other officials

Each official with responsibilities pertaining to the financial management of the municipality must take all reasonable steps within their area to ensure that:



- the system of financial management and internal control is maintained;
- financial and other resources are utilised effectively, efficiently and economically;
- revenue due to municipality is collected;
- assets are safeguarded and maintained; and
- unauthorised, irregular or fruitless and wasteful expenditure is prevented.

5.6 Delegations

The accounting officer must develop an appropriate system of delegation that will maximise the administrative and operation efficiency of the municipality's financial administration. In accordance with that system, the accounting officer may delegate to any member of top management, any power or duty assigned to his/her position or that are necessary to assist in complying with legislation. However, the accounting officer may not delegate any power or duty to a political structure or office-bearer.

The delegation framework should provide for each delegation to be in writing and subject to limitations and conditions imposed by the accounting officer. Delegations may be either to a specific person or to the holder of a specific post. In the case of delegations to a member of top management, the member may be authorised to sub-delegate that function to an official within his area of responsibility.

The delegation of powers and functions does not however divest the accounting officer of the responsibility or the performance of the duty.

5.7 Employment contracts

A person to be appointed as a manager directly accountable to the municipal manager, may only be appointed in terms of a written employment contract and subject to a separate annually concluded performance agreement.

The employment contract must include details of duties, remuneration, benefits and other terms and conditions.

The performance agreement must include performance objectives and targets, as well as the timeframes within which it must be met. Standards, procedures for



performance evaluation together with the consequences of substandard performance, should also be included.

The performance agreements of the municipal manager and other senior managers should be made public no later than 14 days after the approval of the service delivery and budget implementation plan.

Bonuses based on performance may only be awarded after the end of the financial year and the approval of the performance evaluation by council.

6. Municipal revenue

(MFMA Chapter 3, MSA Chapter 8)

6.1. Bank accounts

Every municipality will have at least one bank account, designated as its primary account in order to promote accountability on inter-governmental transfers. All money received by the municipality has to be deposited into a bank account, but certain funds/moneys specified in section 8 of the MFMA must only be paid into the primary bank account. Such amounts include allocations paid to municipality (even when on behalf of another municipality or municipal entity) and income received on investments or in connection with interests in municipal entities.

The details of the primary bank account, including the name of the bank and the account number and type, have to be submitted to the National and Provincial Treasury and the Auditor General. Details of new bank accounts opened by the municipality have to be submitted to the Provincial Treasury and Auditor-General within 90 days of being opened.

Although the municipal manager as accounting officer is responsible for the administration of the municipality's bank accounts, he/she may delegate these duties to the chief financial officer in accordance with the delegation framework.

A separate bank account may be opened for the purpose of a relief or trust fund and all money received by the municipality for the purpose of that relief or trust fund must



be deposited into that account. Withdrawals may only be made subject to any conditions on which the fund was established.

6.2. *Withdrawals from bank accounts*

Only the accounting officer or chief financial officer may withdraw money from the municipality's bank accounts to defray expenditure, pay over amounts received on behalf of another organ of state, refund money incorrectly paid into the municipality's account, refund guarantees or deposits or for cash management and investment purposes.

A consolidated report on all withdrawals made in respect of unauthorised/irregular expenditure, relief or charitable funds, funds received on behalf of another, amounts credited to the account in error, refunds for deposits and investment purposes, has to be tabled in council within 30 days of the end of each quarter.

6.3. *Cash and investment management*

A municipality may, in accordance with the prescribed investment framework, invest surplus cash that is not immediately required to finance the operations of the municipality. Every financial institution, where a municipality has a bank or investment account, must notify the Auditor General within 30 days of the end of the financial year of the account type and number, as well as the opening and closing balances of each account.

6.4. *Disposal of capital assets*

A municipality may not dispose of any capital asset needed in the provisioning of basic municipal services. Ownership of capital assets, other than those needed to provide basic services, may only be transferred after council has taken into consideration the market value as well as the service potential of the asset. Any disposal of capital assets has to be in accordance with the supply chain management policy of the municipality.



6.5 Tariff policy

A municipality must give effect to the provisions of the Constitution by promoting the development of the community and ensuring that all members of the community has access to at least the minimum level of basic services.

In order to achieve these objectives, every municipality must adopt and implement a policy on the levying of fees for municipal services which reflects at least the following:

- The equitable treatment of users of municipal services;
- The amount paid for services generally reflects the usage of that service;
- Poor households have access to basic services through tariffs that only cover operational and maintenance costs, special tariffs for low levels of consumption or subsidised tariffs;
- Tariffs are set at levels that facilitate the financial sustainability of the service; and
- Provision is made for local economic development.

The tariff policy may differentiate between different categories of users as long as it does not amount to unfair discrimination.

The tariff policy should be implemented through the adoption of by-laws.

6.6 Property rates

6.6.1 Rating

Only a metropolitan or local municipality has the power to levy rates on the properties in its area.

a) Rates policy

The council of a municipality must adopt a policy on the levying of rates on rateable property, which takes effect on the effective date of the valuation roll and must accompany the annual budget when tabled in council.



General requirements of the rates policy are that the policy must:

- treat all persons liable for property rates equitably;
- determine the criteria to be applied if the municipality levies different rates for different categories of properties, exempts a specific category of owners or grants a rebate or reduction in the property rates;
- identify and quantify the costs of exemptions, rebates and reductions;
- take into account the effect of rates on the poor and include measures to alleviate the burden on them;
- allow the municipality to promote local, social and economic development

Before adopting the rates policy, the municipality must follow a process of community participation in accordance with the MSA. Furthermore, the municipal manager must display the draft policy for at least 30 days at the municipality's offices and on the website of the municipality, as well as publishing a notice in the local media to state that the draft policy has been published for comments.

The rates policy has to reviewed and amended annually as part of the budget process. Any amendments must accompany the annual budget when tabled in council.

b) Levying of rates

When levying rates a municipality must levy rates on all rateable property in its area, however, this does not oblige a municipality to levy rates on amongst others, properties of which the municipality is the owner and public service infrastructure. Furthermore, a municipality may in terms of its rates policy levy different rates on different categories of rateable property based on either the use or geographical area of the property.

A property used for multiple purposes must be assigned to a category according to the use of the property. Alternatively the rates levied on such property may be apportioned to the different purposes based on the market value of the property.



Rates on properties in a sectional title scheme are levied on each individual unit and not on the property as a whole.

Rates levied on a property are a rand amount levied on the market value of the property. In the case of public service infrastructure the rates are based on the market value less 30%.

When levying rates, the rates are levied for a financial year, therefore rates become payable from the start of the financial year.

The municipality may exempt a specific category or owners of properties from the payment of levies or grant them a rebate or refund on the rates payable on their properties. Such categories may include:

- indigent owners;
- pensioners;
- owners temporarily without income;
- properties situated in adverse social, economic or geographical areas;
- agricultural properties

c) *Limitations on levying of rates*

In terms of the Constitution, a municipality may not levy rates on properties in a way that would unreasonably prejudice national economic policies, economic activity or the mobility of goods, services, capital or labour.

Furthermore, a municipality may not levy rates on:

- the first 30% of the market value of public service;
- any part of the seashore, territorial waters or islands owned by the state;
- special nature reserves, national parks which are not developed or used for commercial, business, agricultural or residential purposes;
- mineral rights;
- property belonging to a land reform beneficiary (but only for 10 years from the date of registration of the property at the Deeds Office);
- the first R15 000 of the market value of residential properties; or
- properties used primarily as a place of public worship.



A municipality may apply in writing to the Minister to be exempted from these exclusions if it can demonstrate that such an exclusion is compromising or impeding its ability to exercise its powers or functions. In addition, a municipality may not levy rates which unreasonably discriminate between categories of non-residential properties.

Rates levied on newly rateable properties must be phased in over a period of three financial years, whereas the rates on the property of a land reform beneficiary and properties used for public benefit activities must be phased in over 4 financial years after the exclusion period has lapsed.

d) Additional rates

The municipality may by resolution of council determine an area as a special rating area and levy additional rates on properties in that area for the purpose of improving or upgrading that area and differentiate between categories of properties within that area. Before determining a special rating area, the municipality must consult the local community and obtain the consent of a majority of the members liable for paying the additional rate.

e) Municipal register of properties

The register in respect of properties within a municipal area must consist of Part A (current valuation roll) and Part B (properties subject to exemptions, rebates, phasing-in discounts and exclusions). Such a register must be open for public inspection during office hours.

6.6.2 Liability for rates

A rate levied on a property must be paid by the owner of the property. Joint owners of a property are jointly and severally liable for the amount due. The rates on a sectional title unit may not be recovered from the body corporate and may not be apportioned between the owners of a sectional title scheme.



Rates are payable either monthly or annually and must be paid on or before a date determined by the municipality.

The municipality must furnish each person liable for property rates with a written account specifying the amount due, the date for payment, method of calculating the rates levied market value and discount or rebates.

If an amount due is unpaid by the owner of a property, the municipality may recover the amount from a tenant but only limited to the amount of rent due and payable but not yet paid. Such an amount should be set-off against any money owed by the tenant to the owner.

Similarly, a municipality may recover unpaid rates from an agent of the owner, limited to the amount received on behalf of the owner, less any commission due.

6.6.3 General valuation of rateable property

A municipality intending to levy rates on properties must cause a general valuation to be made and a valuation roll to be prepared of all properties in the municipality. The date of a general valuation may not be more than 12 months before the start of the financial year in which the valuation roll is implemented. A valuation roll takes effect from the start of a financial year and remains valid for a maximum period of 4 years, unless the MEC for local government grants an extension in terms of section 32 (2).

a) Municipal valuers

The municipality must designate either an official or person in private practice as the municipal valuer, responsible for the valuation of all properties, preparation of the valuation roll and generally providing administrative support incidental to the valuation roll. The municipal manager may also designate officials as assistant valuers or data-collectors to assist with the responsibilities of the municipal valuer.



The municipality may enter into an agreement with another municipality to designate a single municipal valuer and share the costs of preparing valuation rolls.

The persons designated as municipal valuer or assistant valuers must be registered as a professional valuer and may not be a councillor. Such persons have access to any specific property between 07:30 and 19:00 on any day except a Sunday or public holiday to inspect that property for the purpose of the valuation.

A municipal valuer or his assistants must disclose any interest in a property in the municipality and may not use his/her position for private gain.

6.6.4 Valuation criteria

Properties are valued in accordance with generally recognised valuation practices, methods and standards and for that purpose, the inspection of the property is optional. If the available market-related data is not sufficient for the valuation of any category of rateable property, such property may be valued in accordance with any mass valuation system or technique.

The market value of a property is the amount that would be realised if the property was sold on the date of valuation in the open market by a willing seller to a willing buyer. The following values should be considered in determining the market value of a property:

- any licence, permission or other privilege granted in terms of legislation;
- any immovable improvement on the property; and
- any use of the property that is inconsistent with its permitted use.

In determining the market value of a property, the value of any building under the surface of the property and of any equipment or machinery must be disregarded.



6.6.5 Valuation rolls

The valuation roll must list all properties in the municipality and reflect the following particulars in respect of each property:

- description;
- category in which property falls;
- physical address;
- size;
- market value; and
- name of owner.

The municipal valuer must submit the valuation roll to the municipal manager who must within 21 days of receipt thereof publish a notice in the provincial gazette and local media inviting the local community to inspect the valuation roll.

Any person may inspect the roll during office hours and on payment of a reasonable fee make extracts from the valuation roll or lodge an objection with the municipal manager in relation to a specific property. The lodging of an objection does not defer liability for payment.

The municipal manager should forward all objections to the valuer who must consider each objection and decide whether or not to amend the valuation roll based on the facts at hand. If the valuation of a property is adjusted by more than 10%, the municipal valuer must provide a written report to the municipal manager which must be submitted to the valuation appeal board.

The appeal board must review and either confirm, amend or revoke the decision. Every person who has lodged an objection must receive written notice of the valuer's decision and the amendments made to the valuation roll as a result. Any person who is not satisfied with the decision of a municipal valuer may lodge an appeal to the appeal board within 30 days from the date on which the written notice was sent.

Any adjustments made to the valuation roll take effect on the effective date of the valuation roll.



6.6.6 Valuation appeal boards

The MEC for local government must establish at least one appeal board for each district and metropolitan municipality. The functions of the appeal board are to hear and decide appeals against the decisions of a municipal valuer and review the decisions of the valuer in relation to objections lodged.

An appeal board consists of a chairperson (a person with legal qualifications and sufficient experience) and between 2 and 4 other members with sufficient knowledge and experience in the valuation of properties. The municipality whose valuation roll is under consideration may be expected to provide the necessary office accommodation and other administrative support to the appeal board.

6.6.7 Updating of valuation rolls

The municipality must at least once a year update its valuation roll. Whenever substantial changes occurred in relation to properties included in the valuation roll, i.e. subdivision, consolidation, etc. a supplementary valuation roll has to be prepared. The supplementary valuation roll takes effect on the first day of the month following the completion of the public inspection period and remains valid for the duration of the current valuation roll.

6.6.8 Transitional arrangements

The date of commencement for the Act has been promulgated in Government Gazette 27720 as being 2 July 2005. A rates policy adopted before this date continues to be effective until the date on which the first valuation roll prepared in terms of the Act takes effect.



7. Municipal budgets

(MFMA Chapter 4)

7.1. Annual budgets

For each financial year, an annual budget, including both the operating and capital budgets, must be approved before the start of the financial year. Such an annual budget should set out the anticipated revenue from each source and expenditure for each vote for the next financial year as well as the following two financial years. The budget should indicate the estimated revenue and expenditure for the current year, as well as the actual (audited) revenue and expenditure for the prior year.

When tabling the annual budget in council, it should be accompanied by the following supporting documentation:

- draft resolutions for the approval of the budget;
- performance objectives for revenue and expenditure
- a monthly projected cash flow projection;
- proposed amendments to the integrated development plan and budget related policies;
- details of investments, municipal entities and new service delivery agreements
- allocations or grants to be made by the municipality;
- estimated cost of salaries, allowances and benefits of political office bearers, councillors, municipal manager, chief financial officer and senior managers; and
- in respect of a municipal entity, the estimated cost of salaries, allowances and benefits of directors, chief executive officer and senior managers, and
- any other information that may be prescribed.

7.2. Funding of expenditure

The annual budget may only be funded from anticipated revenue to be collected, based on the collection levels to date and actual collection in previous year, and cash-backed accumulated surpluses from previous years. In addition, the capital budget may also be funded from borrowed funds.



7.3. Capital projects

Expenditure on capital projects may only be incurred if the cost of the project has been appropriated in the capital budget, the project has been approved by council and the sources of funding have not been committed to another project. Before council can approve a capital project, it should consider the total cost of the project as well as the future operational costs and potential revenue.

7.4. Budget preparation process

The mayor must table the time schedule for the preparation and approval of the annual budget, review of the integrated development plan and budget-related policies and consultative processes at least 10 months before the start of the financial year, i.e. 1 September.

7.5. Publication of annual budgets

Immediately after the budget has been tabled in council, but at least 90 days before the commencement of the budget year, it has to be made public and the community must be invited to submit representations in respect of the proposed budget. A copy should also be submitted to National Treasury and the relevant Provincial Treasury.

After considering the budget submissions from the community and/or National Treasury and Provincial Treasury, an opportunity should be granted to the mayor to respond to the submissions and if necessary, to revise the budget based on the comments before tabling the amendments.

7.6. Approval of annual budgets

The annual budget, together with the adoption of the necessary resolutions must be approved before the start of the next financial year; 30 June. A copy of the approved budget must be submitted to the National and Provincial Treasuries

If the annual budget has not been approved by the first day of the financial year, the matter should immediately be reported to the MEC for local government.



7.7. Adjustments budgets

The mayor must table an adjustments budget in council to downwardly adjust revenue and expenditure projections, appropriate additional revenue to accelerate spending programs or authorise unforeseeable and unavoidable expenditure. The adjustments budget should be accompanied by explanations of the impact of on the annual budget and a motivation of material changes to the annual budget. Rates and taxes may not be increased during the year as a result of amendments to the annual budget, except when in terms of a financial recovery plan.

7.8. Unforeseen and unavoidable expenditure

The mayor may authorise emergency expenditure that has been unforeseen and unavoidable if such expenditure is reported to the council and appropriated in an adjustments budget. If such an adjustments budget is not passed within 60 days, the expenditure will be regarded as unauthorised.

7.9. Unspent funds

Funds that are unspent at the end of the financial year are forfeited, unless it was appropriated as part of a multi-year capital budget.

7.10. Shifting of funds between multi-year appropriations

Where funds are appropriated in terms of a multi-year capital budget, spending during a financial year may exceed the appropriated amount for that specific year with up to a maximum of 20% if the increase is funded within the following year's appropriation, written approval from the mayor is obtained and the municipal manager certifies that the actual revenue for the year is expected to exceed the budgeted revenue and sufficient funds are available to fund the increase.



7.11. Unauthorised, irregular, fruitless and wasteful expenditure

A political officer bearer, municipal manager and responsible official are liable for unauthorised expenditure if such expenditure was incurred deliberately or negligently.

Unauthorised, irregular, fruitless and wasteful expenditure must be recovered from the person responsible for the expenditure unless it was authorised by an adjustments budget or certified as irrecoverable after an investigation by a committee of council.

Irregular expenditure, theft and fraud must be reported to the South African Police Service.

The municipal manager must inform the mayor, MEC for local government and Auditor-General in writing of all unauthorised, irregular, fruitless and wasteful expenditure, the person under investigation for such expenditure and the steps taken to rectify the expenditure and prevent the recurrence thereof.

For a more detailed discussion on the preparation of municipal budgets, refer to the Budgeting chapter of this handbook

8. Municipal debt

(MFMA Chapter 6)

8.1. General conditions applying to debt

All debt, short-term and long-term may only be incurred in Rand and may not be indexed or affected by fluctuations in the value of the rand against any foreign currency.

8.2. Short-term debt

In accordance with the Constitution and the MFMA, a municipality or municipal entity may incur short-term debt only to bridge operating shortfalls within a financial year in expectation of realistic anticipated income or for capital purposes to be repaid from enforceable allocations of long-term debt commitments. The short-term debt should



be approved by council through a resolution signed by the mayor. When approving a bank overdraft, the credit limit and terms of agreement must be specified in the resolution.

8.3. Long-term debt

Long-term debt may only be incurred for the purpose of financing capital expenditure aimed at achieving the objectives of local government or to refinance existing long-term debt. Both council and the municipal manager must sign the debt agreement and the community should be involved in accordance with the requirements of section 21A of the Municipal Systems Act.

Capital expenditure for the purpose of long-term debt includes all costs directly associated with the debt agreement, including financing costs and costs of professional services.

Re-financing agreements may be entered into if the existing debt was lawfully incurred, the period of the debt does not exceed the useful life of the underlying asset and the net present value of future payments is less than the net present value of future payments before re-financing.

8.4. Security

A municipality may provide any appropriate security for any of its own debt obligations as well as those of a municipal entity under its control – such security being authorised by council through a resolution. When an asset that is needed to provide basic services is provided as security, neither the municipality nor the holder of the security may deal with the asset in a way that will impede the continuation of that basic service.

8.5. Disclosure

When interacting with a prospective lender, the person acting on behalf of the municipality must disclose all information material to the decision of the lender and take reasonable care to ensure the accuracy of the information.



A lender may therefore rely on the written representations signed by the accounting officer.

8.6. *Municipal guarantees*

A municipality may only issue a guarantee for the debt of any organ of state or person when such a guarantee is within the budgetary limits of the municipality. A municipality can only issue a guarantee for the debt of a municipal entity under the sole control, if authorised by Council subject to the same conditions applicable to the municipality.

The debt of municipal entity under control of another person can only be guaranteed with the approval of National Treasury, provided the municipality creates a cash-backed reserve equal to its exposure or maintains an insurance policy to the value of its exposure for the duration of the guarantee.

9. Goods and services

(MFMA Chapter 11)

9.1. *Supply chain management*

Every municipality and municipal entity must implement a supply chain management policy that is fair, equitable, transparent, competitive and cost-effective. The supply chain management policy is applicable to the procurement and disposal of goods and services as well as the selection of contractors and external mechanisms for the provision of goods and services. Some of the significant matters to be addressed in the policy include the range of processes at the municipality's disposal, the criteria for each process, bid documentation, screening processes and measures for combating fraud and corruption.

A municipality or municipal entity is not obliged to consider an unsolicited bid outside of its normal bidding process, but if it does decide to do so, it may only be in accordance with a prescribed framework that regulate and limit the powers of the municipality or municipal entity.



If a tender other than the one recommended through the adjudication process, is approved, the accounting officer must notify the Auditor-General, Provincial Treasury and National Treasury in writing of the reasons.

The accounting officer is further responsible for the implementation of the policy and appropriate controls to minimise the likelihood of fraud, corruption, favouritism and irregular practices.

Contracts procured through the supply chain management process must be in writing and stipulate the terms and conditions of the agreement. The accounting officer must ensure that contracts are properly managed and that the performance of the contractor is monitored and reported on a monthly basis. Agreements may only be amended after tabling the reasons in council and consulting the local community.

Councillors may not be members of any of the municipal tender committees and no person may interfere with the supply chain management system or amend or tamper with any tender or bid after submission.

The accounting officer and all other officials involved in the implementation of the supply chain management system must meet the prescribed competency levels. The municipality must help build capacity by providing the necessary resources and opportunities for the training of supply chain management officials.

The Supply Chain Management Regulations were issued on 30 May 2005 (Government Gazette 27636) and provides additional guidance on the establishment and implementation of supply chain management policies, as well as the risk and performance management thereof. There is also a specific section dealing with the prohibition of awards to certain categories of persons.

9.2 Public-Private Partnerships

A municipality may only enter into a public-private partnership agreement if it can demonstrate that the agreement will provide value for money, is affordable and will transfer the appropriate technical, operational and financial risk to the private party.



Before such an agreement is concluded the municipality must conduct a thorough feasibility study of the proposal and make consult the local community.

For a more detailed discussion on alternative service delivery mechanisms, including public-private partnerships, refer to the Alternative Service Delivery chapter of this handbook.

10. Financial reporting and auditing

(MFMA Chapter 12)

10.1 Preparation of financial statements

Financial statements that fairly present the financial position, performance against the budget and the management of the municipality's resources have to be prepared in accordance with generally recognised accounting practice (GRAP) for each financial year within 2 months of the end of the year.

Where a municipality has control – sole or shared – of a municipal entity, consolidated financial statements have to be prepared and included in the annual report of the municipality.

10.2 Disclosures on intergovernmental and other allocations

In addition to the disclosures required by GRAP, the financial statements should also disclose allocations received and/or made by the municipality, including how these allocations were spent, per vote, excluding spending on the equitable share allocation.

The financial statements must also disclose whether the municipality or municipal entity has complied with the conditions attached to the allocations received, the reasons for non-compliance and whether funds destined during the year were withheld or delayed.

10.3 Disclosures concerning councillors, directors and officials

The notes to the financial statements have to disclose details of the:



-
- Salaries, allowances and benefits of political office bearers and councillors or directors;
 - Names of and arrears owed by councillors for rates or services and that are outstanding for more than 90 days; and
 - Salaries, benefits and allowances of the accounting officer, chief financial officer and senior managers.

Other compulsory disclosures include:

- List of municipal entities under control of the municipality.
- Contributions to organised local government for the year and the amount outstanding at the end of the year.
- Amounts paid in audit fees, taxes, levies, duties, pension and medical aid contributions, as well as the amount outstanding at the end of the year.
- In respect of each bank account, the name of the bank, type of account and the balance at the beginning and the end of the financial year.
- Summary of all investments held at the end of the financial year.
- Details of all contingent liabilities, material losses and material irregular, fruitless or wasteful expenditure, as well as criminal or disciplinary processes instituted as a result of these.

10.4 Submission of financial statements and annual reports

As stated in paragraph 1, financial statements of a municipality or municipal entity have to be prepared and submitted to the Auditor-General within 2 months after the reporting date (31 August), whilst consolidated financial statements have to be prepared and submitted within 3 months of the reporting date (30 September).

In return, the Auditor-General has 3 months from receiving the financial statements (30 November) to complete the audit and submit the audit report to council.

The accounting officer of a municipal entity has 6 months from the reporting date to submit the entity's annual report to the municipal manager of its parent municipality.



The mayor of a municipality has to table in council the annual report of the municipality within 7 months of the reporting date (31 January). If the mayor is unable to table the annual report, he/she must submit a written explanation to the council.

Immediately after the annual report is tabled in council, the accounting officer must invite the local community to submit representations on the annual report in accordance with the requirements of section 21A of the Municipal Systems Act.

Within 2 months of the annual report being tabled in council (31 March), the council must adopt an oversight report containing the council's comments on the annual report and a statement of whether the annual report has been approved or rejected.

The accounting officer must attend the meetings where the annual report is considered and forward the minutes of those meetings to the Auditor-General and provincial treasury and publish the oversight report in accordance with section 21A of the MSA within 7 days of its adoption.

The mayor has to monitor that all issues raised by the Auditor-General in the audit report are addressed by the municipality

10.5 Annual report

An annual report provides a record of the activities and performance of the municipality during the year and against the budget, thereby promoting accountability and transparency in the management of the municipality or municipal entity.

For each financial year, an annual report must be prepared within 9 months after the end of the financial year. The annual report consists of the financial statements, audit report, annual performance report and performance audit report, accounting officer's assessment of arrears and performance of municipality, as well as any additional information and explanations relevant to an understanding of the financial statements.

Comments and recommendations of the audit committee are also included in the annual report.



10.6 Public Audit Act

(Act 25 of 2004)

10.6.1 Audits by the Auditor-General

The Auditor-General (AG) may authorise a member of staff or a private practitioner registered as an accountant and auditor to perform or assist in the performance of an audit. It is the responsibility of the AG to determine the minimum qualifications, experience and competence of authorised auditors and to issue a code of conduct prescribing the standards of professional conduct for the performance of an audit.

When performing an audit, the AG or authorised auditor has at all reasonable times full and unrestricted access to any:

- written and/or electronic record of information which reflects the business, financial position, financial performance and financial results of the municipality;
- assets under the control of the municipality;
- staff members or representatives; and
- properties, premises or vehicles under the control of the municipality.

The AG may copy or make extracts from any such document or record at the expense of the municipality.

A person who is required in terms of any legislation to maintain secrecy or confidentiality relating to a matter, may be required by the AG to disclose to him/her information either orally or in writing, even though that person will otherwise be in breach of the obligation of non-disclosure. Compliance with a request from the AG is not considered a breach of a confidentiality or secrecy obligation.

When performing an audit, the AG may under the authority of a warrant, issued by a judge or magistrate, enter and search any property, premises or vehicles and seize any document or record for the purpose of completing the audit. The



person conducting the search must provide proof of identity and a copy of the warrant to the person in charge of such property, premises or vehicle.

The municipality must render all reasonable assistance to the AG to complete the audit within the applicable timeframes and accede to all reasonable requests of the AG, including the provision of office accommodation and parking, logistical support and access to office equipment, free of charge.

The authorised auditor, whether the AG or a private practitioner, must receive notice of every audit committee meeting and may attend and participate in any such meeting at the expense of the municipality.

10.6.2 *Protection of information*

The AG must take precautionary steps to guard against the disclosure of secret or classified information, however, this does not prevent the disclosure of any audit finding on unauthorised, irregular, fruitless or wasteful expenditure or on any other irregular or criminal conduct relating to the financial affairs of the municipality.

10.6.3 *Submission of financial statements*

Financial statements have to be submitted to the AG within the period prescribed by the Municipal Finance Management Act (MFMA), i.e. 2 months after the end of the financial year.

10.6.4 *Audit reports*

The AG must prepare an audit report on each audit, reflecting opinions and statements on:

- whether the financial statements fairly present the financial position and results of its operations and cash flow are in accordance with GRAP;
- compliance with applicable legislation relating to financial matters and management;



- information reporting relating to the performance of the municipality against predetermined objectives; and
- whether the municipality's resources were procured economically and utilised efficiently and effectively.

Audit reports have to be finalised and submitted to the municipality within the period prescribed by the MFMA, being 3 months.

10.6.5 *Audit fees*

The AG determines the basis for the calculation of audit fees to be recovered and the municipality must settle the accounts for audit fees within 30 days from the date of the invoice. Interest may be charged on any account not paid within the prescribed period of 30 days. National Treasury and the Provincial Treasury must be promptly notified if a municipality defaults on the payment of audit fees and may order the audit fee to be defrayed from a vote on the national or provincial budget if the National Treasury is of the view that the municipality has financial difficulties or constraints to settle to costs.

11. Resolution of financial problems

(MFMA Chapter 13)

11.1 *Responsibility for resolution of financial problems*

The municipality is primarily responsible for avoiding financial problems by promptly meeting its financial obligations and commitments. It is also responsible for identifying and resolving financial problems by immediately seeking solutions and notifying the MEC's for local government and finance, as well as SALGA, of its problems.

11.2 *Discretionary provincial interventions*

If a provincial MEC for local government becomes aware of a serious financial problem in a municipality, he/she must consult with the mayor to determine the seriousness of the problem and consider whether the situation justifies an intervention as stipulated by the Constitution.



The following factors, singly or in combination, may indicate serious financial problems:

- Failure to make payments as when due.
- Defaulting on financial obligations for financial reasons.
- Actual current expenditure exceeding actual current revenue.
- More than 60 days late in submitting financial statements to Auditor General.
- Auditor-General expressed a disclaimer or no opinion on the financial statements.
- Municipality failed to intervene where any of the above factors are present at a municipal entity under its control.
- Any other factors indicating that the municipality or municipal entity will be unable to fulfil its obligations for financial reasons.

11.3 Mandatory provincial interventions

If a municipality is in serious or persistent material breach of financial obligations which has caused the failure to provide basic services or meet financial obligations, the provincial executive must request assistance from the Municipal Financial Recovery Service to prepare an appropriate recovery plan.

The following factors, singly or in combination may indicate that the municipality is in serious material breach of its obligations:

- failure to make payments to lender or investor as and when its due;
- failure to meet contractual obligation which provides security;
- failure to make other payments which either individually or in aggregate is more than 2% of budgeted operating expenditure;
- the failure to meet financial obligations has impacted on the availability of credit to other municipalities; or
- recurring or continuous failure to meet financial obligations has caused an impairment of the municipality's ability to procure goods and services on usual commercial terms.



11.4 Financial recovery plans

The primary objective of a financial recovery plan is to restore the municipality's ability to meet its financial commitments and provide basic services. For a discretionary provincial intervention any suitably qualified person may prepare a financial recovery plan. However, for a mandatory provincial intervention, only the Municipal Financial Recovery Service may prepare the recovery plan.

When preparing a financial recovery plan, the municipality, its suppliers and creditors, the MECs for finance and local government, as well as SALGA should be consulted. Any financial recovery plan that has been previously prepared must be taken into account.

The main elements of a financial recovery plan are the:

- identification of the financial problems;
- strategy to address the financial problems;
- resources needed, timeframes and milestones; and
- actions to achieve the strategy.

The plan may also provide for the liquidation of certain assets, debt restructuring and exploring new or additional revenue sources. Spending limits, revenue targets, budget parameters and revenue-raising measures can be suggested or recommended as part of the financial recovery strategy for the municipality.

The financial recovery plan must be submitted for comments and a notice published in a local newspaper at least 14 days prior to the approval of the plan.

Upon receipt of the plan, the MEC for local government must ensure that the appropriate process has been followed before approving and submitting it to the municipality, the Minister responsible for local government, the Auditor-General and SALGA.

The municipality should submit monthly reports to the relevant MEC for local government on the implementation of the plan.



11.5 Debt relief

The implementation of a financial recovery plan does not restrict the access of other parties having a claim against the municipality, instituting legal processes. The municipality may apply to the High Court for an order to stay of all legal processes including the execution thereof, for a maximum period of 90 days. Before issuing such an order, the High Court will satisfy itself that the municipality cannot meet its financial commitments and all assets not necessary to provide basic services have been liquidated in accordance with a financial recovery plan.

12. Financial misconduct

(MFMA Chapter 15)

12.1 Acts of financial misconduct

The accounting officer, chief financial officer or any other official of a municipality or municipal entity exercising financial management responsibilities will commit an act of financial misconduct if that officer deliberately or negligently:

- contravenes legislation;
- fails to comply with duties imposed by legislation;
- fails to carry out any delegated duty or condition of a delegated power or duty;
- incurred or permitted unauthorised, irregular, fruitless and wasteful expenditure;
- or
- submitted incorrect or misleading information in terms of any requirement of legislation.

The municipality must investigate allegation of financial misconduct and institute appropriate disciplinary proceedings.

12.2 Offences

The accounting officer of a municipality or municipal entity is guilty of an offence if that officer deliberately or negligently:

- contravenes or fails to comply with the fiduciary or other financial management responsibilities imposed by the MFMA;



-
- fails to implement the supply chain management policy;
 - fails to take all reasonable steps to prevent unauthorised, irregular, fruitless or wasteful expenditure;
 - fails to take all reasonable steps to prevent corruptive practices relating to the management of assets or implementation of supply chain management;
 - mislead or withhold information from the Auditor-General; or
 - provides false or misleading information in documents submitted or made public.

A councillor of a municipality, director of a municipal entity or any other official is guilty of an offence if that person:

- deliberately influences any official from complying with legislation;
- interferes in the financial management responsibilities assigned or delegated by legislation;
- interferes in the management or operational activities of a municipal entity;
- gives incorrect, untrue or misleading information material to an investment decision; or
- provides false or misleading information submitted or made public.

12.3 Penalties

A person is liable on conviction of an offence to imprisonment or appropriate fine determined in terms of applicable legislation.

13. Community participation

(MSA Chapter 4)

13.1 Development of culture of participation

The municipality must encourage and create conditions for the local community to participate in the affairs of the municipality, including the preparation and review of the integrated development plan, performance management system and its own performance, the preparation of the budget and other strategic decisions relating to the provision of municipal services. For this purpose, the municipality must annually allocate funds in its budget to contribute to building the capacity of the local community, councillors and staff



The mechanisms, processes and procedures established for the participation of the local community must provide for the:

- receipt, processing and consideration of petitions and complaints;
- notification and public comment procedures;
- public meetings and hearings by council and political structures;
- consultative sessions with community organisations; and
- report-back to the community.

In establishing such mechanisms, processes and procedures, the municipality must take into account the needs of people who cannot read or write, with disabilities and other disadvantage groups.

Meetings of the council and other committees are open to the public and the municipal manager must give notice to the public of the date, time and venue of every ordinary council meeting as well as special and urgent meetings. Certain meetings may be closed to the public depending on the nature of the business being discussed. However, when tabling the following, the public may not be excluded from council meetings:

- any draft by-law;
- budget;
- draft integrated development plan;
- performance management system; or
- service delivery agreement.

Notices through the media to the local community, must be done in the local newspapers or radio, having regard to the language preferences of the community. A copy of every notice must be displayed at the municipal offices. When the community is invited to submit written comments, the municipality must nominate a staff member to assist persons that cannot read or write to transcribe their comments.

Documents to be made public



All documents that have to be made public must be conveyed by displaying it at the municipality's offices, on the municipality's website and publishing notices in local newspapers on where the documents can be obtained.

The municipality has to consider whether it will be affordable and cost-effective to establish its own website. If it is not considered to be affordable, it must provide the information for display on an organised local government website sponsored by National Treasury.

14. Integrated development planning

(MSA Chapter 5)

In striving to achieve the objectives of local government and giving effect to its developmental duties, the municipality must undertake planning that is developmentally orientated. Such planning must be done through the adoption of a single, inclusive strategic plan which integrates proposals for development, aligned with the resources and capacity of the municipality and is compatible with national and provincial development plans. This integrated development plan forms the framework and basis for the annual budget.

As the principal strategic planning instrument of the municipality, it not only binds the municipality in the exercise of its executive authority, but also all other persons to the extent the relevant by-laws have been passed. Core components of the Integrated Development Plan (IDP) include:

- council's vision, development priorities, objectives and operational strategies;
- an assessment of existing levels of development;
- a spatial development framework for a land use management system;
- a disaster management plan;
- a financial plan, including budget projection for next three years; and
- key performance indicators and performance targets.

Every district municipality together with its local municipalities must adopt a framework which at least identify the planning requirements, matters to be included in the plan, the principles to be applied and the processes for consultation with each other. The



local community must be consulted on its developmental needs and must participate in the drafting of the IDP.

The executive mayor or committee is responsible for managing the drafting of the IDP, assigning responsibilities and submitting it to council for consideration.

The municipal manager must submit a copy of the adopted IDP to the MEC within 10 days of adoption, along with a summary of the process followed and a copy of the framework. The MEC may request the municipality to adjust the plan, however, the municipality can object to such an amendment, in which case the objection should be referred to an *ad hoc* committee for decision.

The IDP must be reviewed annually taking into account an assessment of the municipality's performance and changing circumstances.

15. Performance management

(MSA Chapter 6)

The municipality must promote a culture of performance management by establishing a performance management system that is commensurate with its resources, best suited to its circumstances and in line with the IDP. Furthermore the performance management system (PMS) should contribute to the administration of the municipality's affairs in a way that is economical, effective, efficient, accountable and transparent.

The executive committee or mayor is responsible for the development of the PMS and submitting it to council for adoption.

In terms of its performance management system, the municipality must set key performance indicators as a yardstick for measuring its performance, including the outcomes and impact relating to its development priorities and objectives. For each of these development priorities, measurable performance targets have to be set and need to be monitored on a regular basis but measured and reviewed at least once a year.



The performance management system has to incorporate appropriate steps to improve the performance with regard to the development priorities and establish a process of regular reporting to council, the community and other stakeholders.

The municipality through appropriate mechanisms, processes and procedures, must involve the community in the development, implementation and review of the municipality's performance management system. The community should be allowed to participate in the setting of key performance indicators and targets for the municipality.

An annual performance report, indicating the performance of the municipality and each external service provider in comparison with the performance targets and results of previous years, has to be prepared as part of the annual report. The results of the performance measurements must be audited as part of the internal audit processes and annually by the Auditor-General.

Refer to the Performance management section for more detailed discussion on the implementation thereof.

16. Municipal entities

(MSA Chapter 8A, MFMA Chapter 10)

16.1 Types of municipal entities

A municipal entity may only be established as a private company, service utility or multi-jurisdictional service utility. A municipality may not hold an interest in any other corporate bodies, including a trust, except where such a corporate body is a fund established for the benefit of its employees, i.e. pension fund.

A private company only refers to a company established in terms of section 19 or 20 of the Companies Act and does not include a section 21 company. However, the transitional provisions to the MSA amendments allow for the continued existence of section 21 companies and/or other corporate bodies until the disestablishment, liquidation or conversion to a service utility or multi-jurisdictional service utility.



16.2 Establishment of municipal entities

When considering the establishment of a municipal entity, the municipality must define the service or function that the entity will perform on its behalf and assess the impact the transfer of that function or service will have on its own assets, staff and liabilities.

The municipal manager should make a public announcement on the proposed establishment of a municipal entity and invite comments from the local community at least 90 days prior to the meeting at which the establishment of the entity is to be approved. The council should also take into account the views and comments of National Treasury, the MEC for local government and other stakeholders, when establishing a municipal entity.

a) *Private company*

A municipality may acquire or hold an interest in a private company only if such an interest represents sole or shared control over the entity. Control over a municipal entity may only be shared with other municipalities and/or organs of state. Where a private investor has an interest in a private company established as a municipal entity, control over that entity should vest in one or more municipalities or organs of state.

Private companies must comply with the Companies Act, but where conflicts exist with municipal legislation, the municipal legislation prevails.

b) *Service utilities*

A service utility is a juristic person under the sole control of the municipality which established it and must restrict its activities to the purpose for which it was established.

Service utilities are established by passing a by-law which states the purpose for which it is established, confer powers and duties and provides for the operation and management of the service utility, including the appointment of the board of directors.



c) *Multi-jurisdictional service utilities*

Two or more municipalities may establish a multi-jurisdictional service utility through written agreement. Such an agreement must determine the area for which the utility is established, identify the function to be performed on behalf of those municipalities, determine the budgetary and funding arrangements and set out the duties of the parent municipalities.

The council of a parent municipality must designate a councillor and/or official as representatives to attend meetings of the board of directors as non-participating observers and shareholder meetings to exercise the rights and responsibilities of shareholders.

16.3 Governance of municipal entities

The board of directors must have the necessary skills and expertise to manage the activities of the entity and consist of at least one third non-executive directors with a non-executive chairperson.

The following persons are disqualified from being a director of a municipal entity:

- A councillor of *any* municipality.
- Member of national assembly or provincial legislature.
- An official of the parent municipality.
- Persons convicted of any offence and sentenced to imprisonment within a period of 5 years of completion of sentence.
- An unrehabilitated insolvent.

A director may be removed from office if his/her performance is unsatisfactory, is unable to perform the functions of office effectively or is convicted of fraud or theft whilst holding office.

The board of directors must provide effective, transparent, accountable and coherent corporate governance, ensure compliance with legislation and communicate openly and promptly with the parent municipality.



16.4 *Financial governance of municipal entities*

a) *Bank accounts*

A municipal entity must open and maintain at least one bank account into which all funds received by the entity must be paid into. All bank accounts of a municipal entity are administered by the accounting officer who is responsible to the board of directors for the management of these bank accounts.

Within 90 days of opening a bank account and annually before the start of a financial year, the accounting officer must submit the details of all bank accounts to the parent municipality, which in turn should submit the details to the Auditor-General, National and provincial treasury.

b) *Budgets*

The budget of a municipal entity must be balanced, consistent with any service delivery agreements and within the limits determined by the parent municipality. Included in the budget should be a multi-year business plan, setting out the key financial and non-financial performance criteria in line with the IDP and budget of the parent municipality.

The board of directors must submit the proposed budget at least 150 days before the start of the financial year to the parent municipality for tabling with the municipal budget in council. Subsequent to tabling in council, taking into account recommendations and comments from council, the budget should be approved no later than 30 days before the start of the financial year.

Within 7 working days after the end of each month, the accounting officer must submit to the parent municipality a report on the state of the budget, comparing the actual revenue, expenditure, borrowings, capital expenditure and allocations received for the month and year-to-date with the approved budget. Such monthly report should also include explanations on material variances and a projection of revenue and expenditure for the remainder of the financial year.



c) *Mid-year budget and performance assessment*

By 20 January, the accounting officer must assess the performance of the entity during the first 6 months of the financial year based on the monthly reports on the state of the budget and the annual report of the previous year. Such report must be submitted to the board of directors and the parent municipality.

d) *Remuneration packages*

The parent municipality must determine the upper limits of salaries, benefits and allowances of the chief executive officer and senior management of a municipal entity and monitor that the entity reports to council all expenditure incurred on directors and staff matters.

e) *Disposal of capital assets*

A municipal entity may only transfer ownership of a capital asset after determining that the asset is not required to provide basic services and considering the market, economic and community value of the asset.

16.5 Accounting officer

As accounting officer, the chief executive officer of a municipal entity is responsible to exercise the utmost care to ensure the protection of resources and act in the best interest of the entity in managing the affairs of the entity.

The accounting officer is responsible for managing the financial administration of the entity and must take all reasonable steps to ensure that the resources are utilised effectively, efficiently, economically and transparently, while the systems of financial and risk management, internal control and internal audit is implemented and maintained. Other duties and responsibilities of the accounting officer include:

- preventing irregular, fruitless and wasteful expenditure;
- asset and liability management;
- revenue and expenditure management;



-
- monthly reconciliation of revenue and accounts;
 - budget implementation; and
 - reporting any impending under collection, shortfalls, overspending, overdrafts and non-payments to the parent municipality.

16.6 Other officials

Each official with financial management responsibilities are responsible to ensure that:

- the systems of financial management and internal control is maintained;
- resources are utilised effectively, efficiently, economically and transparently;
- unauthorised, irregular, fruitless and wasteful expenditure are prevented;
- assets and liabilities are safeguarded and managed effectively;
- all revenue is collected; and
- all relevant legislation is complied with.

16.7 Borrowing of money

A municipal entity may borrow money only in accordance with its multi-year business plan and subject to the same conditions and requirements as municipalities.

16.8 Financial problems in municipal entities

If a municipal entity experiences serious and/or persistent financial problems and the board of directors fail to act accordingly, the parent municipality must take appropriate steps in terms of the service delivery agreement, to impose a financial recovery plan or disestablish the entity.

17. Credit control and debt collection

(MSA Chapter 9)

17.1 Customer care and management

In relation to the levying of rates and taxes and the charging of fees for services by a municipality, it must establish a sound customer management system that aims to create a positive and reciprocal relationship between the municipality and its



consumers. The most significant components of any customer management system can be described as:

- mechanisms for users of services to provide feedback on the quality of services;
- users are informed of the costs involved in service delivery and manner in which monies are utilised;
- consumption of services are measured through accurate and verifiable metering systems;
- persons liable for payment receive regular and accurate accounts; and
- mechanisms to query or verify accounts and appeal procedures, as well as complaint processes.

In order to collect all the money that is due and payable to the municipality, it must implement and maintain a credit control and debt collection policy which is consistent with its rates and tariff policies. The credit control and debt collection policy should also make provision for the issuance of a clearance certificate to certify that all amounts due to the municipality in connection with a specific property during the preceding 2 years have been fully paid prior to the registration of transfer of such property.

The credit control and debt collection policy may differentiate between categories of customers and must provide for:

- credit control and debt collection procedures and mechanisms;
- provision for indigent debtors consistent with rates and tariff policies;
- realistic targets for collection levels, estimates of income and a provision for doubtful debts;
- interest on arrears;
- extension of time for payment of accounts;
- termination of services when payments are in arrears; and
- matters relating to unauthorised consumption of services, theft and damages.

The executive committee or mayor as the supervisory authority is responsible to monitor the implementation and enforcement of the policy and related by-laws.



As the implementing authority, the municipal manager must implement and enforce the policy and related by-laws by establishing effective mechanisms, processes and procedures to collect money due to the municipality.

The separate amounts of persons liable for payment may be consolidated by the municipality and a payment by such a person credited to any account of that person. Furthermore, with the consent of a person liable for the payment of rates or fees, a municipality may enter into an agreement with that person's employer to deduct from the outstanding amount from his/her salary and/or wages.

18. Miscellaneous

(MFMA Chapter 14,)

18.1 Liabilities and risks payable in foreign currencies

Municipalities and municipal entities may not incur liabilities payable in foreign currencies, except for the procurement of goods or services that are denominated in a foreign currency and the Rand value is determined at the time of procurement.

18.2 Forbidden activities

Municipalities and municipal entities may not conduct any commercial activities other than the powers and functions assigned by the Constitution or other legislation and may not provide municipal services outside its area of jurisdiction.

Loans to councillors, officials, directors and members of the public are strictly forbidden.

18.3 Internal audit unit

Every municipality and municipal entity must have an internal audit unit, which is required to prepare a risk-based audit plan and internal audit program, advise the accounting officer and report to the audit committee. Where a municipality or municipal entity requires assistance in developing internal capacity, the internal audit unit may be outsourced.



The MFMA gives effect to financial management reforms that place greater responsibility on managers and makes them more accountable for performance. Whilst it is left to the mayor or Executive Committee to resolve any performance failures, ultimately council is vested with the power and responsibility to oversee both the executive and administration. Circular 34 to the MFMA highlights the importance of council's oversight (governance) responsibility and provides guidance on the process that should be followed when considering the annual report and how to deal with the oversight report.

18.4 Audit committees

Every municipality and municipal entity must have an audit committee established as an independent advisory body to provide council, board of directors and officials with advice. The audit committee is also responsible for reviewing the financial statements, responding to matters raised by the Auditor-General and conducting investigations into financial matters as requested.

The audit committee must consist of at least three persons, the majority of which may not be employed by the municipality or municipal entity and should meet at least 4 times during the year. No councillor may be a member of an audit committee.

An audit committee may be shared amongst a district municipality and the local municipalities within that district or a municipality and municipal entities under its control.

18.5 Councillor remuneration

Political office bearers and councillor may only be remunerated in terms of the framework established by the Public Office-Bearers Act and the Constitution. Any other payments, whether cash or in-kind, are regarded as irregular expenditure and should be dealt with accordingly.

