



**NATIONAL
TREASURY**

Frequently Asked Questions

Municipal Finance Management Act (No 56 of 2003)

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Frequently Asked Questions

Municipal Finance Management Act

Background

The Municipal Finance Management Act, No 56 of 2003, (MFMA) was promulgated to take effect on 1 July 2004 and applies to all municipalities and municipal entities.

National Treasury convened a series of two-day workshops during the months of May and June 2004 on the implementation of the MFMA. These workshops were attended by Councillors and Officials from municipalities. During the course of the two-day workshop over **1000 questions** were raised, both verbally and in writing. Whilst the majority were answered verbally at the various workshops it was considered beneficial to publish the frequently asked questions and responses. All municipalities should receive three copies of the Training DVD's within the next three weeks. Further supporting material is also available on the website for your ease of reference.

This FAQ report will continue to grow with the addition of new questions and answers lodged through the MFMA helpline. Where necessary, existing answers will be revised from time to time to reflect emerging trends or changed circumstances. The latest version will be available on the National Treasury website located under the MFMA page (see further information below).

Disclaimer

This FAQ report is designed to assist and guide municipalities in implementing the MFMA. In using the report regard must be had to the provisions of the Municipal Finance Management Act No. 56 of 2003, the Municipal Systems Act No. 32 of 2000, the Municipal Structures Act (as amended) No. 117 of 1998 and other related legislation.

Please note that, while every effort has been made to ensure the accuracy of the FAQs, errors can occur or situations may change rendering the information inaccurate. This report contains general policy advice and policy interpretation and is not intended to be legal advice. Should a municipality require legal advice this must be obtained from a qualified legal practitioner.

The National Treasury is not liable for damages of any nature arising from reliance on this report.

Further information

Questions relating to the implementation of the MFMA can be emailed or faxed to the National Treasury MFMA help line, as follows:

Email – mfma@treasury.gov.za

Facsimile – (012) 315 5230

Website – www.treasury.gov.za/mfma

IMPLEMENTATION & BACKGROUND

Implementation of the MFMA

When does the Act become effective, what is to be used in the interim and what is the grace period for implementation?

The MFMA took effect on 1 July 2004, with some provisions being delayed to a later date. The Minister of Finance has provided extra time to comply with some of the more complex provisions where the capacity of municipalities may need to be built. Municipalities have all been classified as either low, medium or high capacity. Those with a low capacity are provided with extra time to implement the more complex provisions than municipalities with a higher capacity.

A copy of the section 177 and 180 gazette notices bringing the MFMA into effect on 1 July 2004 and prescribing the sections that will be either delayed or exempted according to the three capacity categories can be found at www.treasury.gov.za/mfma

Also available at the above web address is a user-friendly table "MFMA Implementation Dates" which provides a list of each provision in the legislation and when each municipality must apply the provision. This table has been prepared based on gazettes 26510, 26511 and 27044.

Where provisions have been delayed or exempted for a period of time, the municipality must continue to observe existing legislation such as the LG Transition Act until repealed and the Division of Revenue Act. As the various delayed provisions progressively come into effect the MFMA will supersede all other legislation relating to financial and fiscal matters.

Can municipalities implement the provisions of the Act before the dates as set out in the implementation strategy and what incentives will be offered?

The implementation strategy provides a reasonable time for all municipalities to comply with the MFMA. Wherever possible municipalities are actively encouraged to implement the delayed or exempted provisions sooner and not to wait until the final compliance dates. The Minister of Finance has urged all municipalities to apply the "spirit" of the legislation immediately and not to use the "grace" period as an opportunity to continue poor practices that will be unacceptable when the delayed or exempted provisions take effect.

Categorisation of Municipalities

What process and criteria were used to categorise the different municipalities?

A survey of municipalities was undertaken by the National Treasury during February/March 2004 that requested responses to 22 questions relating to financial and management capacity. The responses were tabulated and scores assigned. The highest scores and those municipalities with the largest budgets were classified into high capacity to implement the MFMA with the remaining municipalities classified as either medium or low capacity. Municipalities were consulted on the outcome of the survey during the countrywide workshops held in May and June 2004.

When and under what conditions can a municipality be re-categorised?

A municipality that believes it can implement the MFMA earlier than regulated can apply to have its capacity level upgraded. Alternatively a municipality that believes it cannot comply by the gazetted dates can request a lower classification. The National Treasury will determine whether a reclassification is warranted and will consider motivation and revised dates submitted by the municipality.

Alternatively rather than a reclassification, a municipality may request a delay in the date(s) of effect of various sections of the MFMA. This is a preferred option where a municipality is experiencing difficulty implementing a particular aspect of the MFMA.

Applications for reclassification or for a delay in the date of effect of a particular section must be made at least three months before the effective date, be fully motivated, in writing and signed by the mayor and municipal manager.

See the document "Application for Later Date of Effect or Reclassification of Capacity" at www.treasury.gov.za/mfma

How does the categorisation relate to other government processes?

The municipal capacity classifications were designed for the purpose of implementing the MFMA and hence may not directly relate to other surveys that measure ability to render services, etc.

Is the AG's office aware of implementation phase-in dates for different categories?

Yes. Municipalities are encouraged to directly engage with the provincial office of the Auditor-General to address any concerns with interpretation. Also, the National Treasury will provide policy guidance where necessary. Municipalities wishing to solicit the assistance of the National Treasury should direct their enquiries to the MFMA email address mfma@treasury.gov.za

Pilot municipalities

What criterion was used to select pilot municipalities?

The objective of the Municipal Finance Management pilot programme was to develop and test the financial reforms before national roll out. With this in mind, a wide geographic spread was needed selecting all metropolitan municipalities and a cross section of district and local municipalities. Generally, higher capacity municipalities were chosen for their ability to quickly implement and refine the reforms and then provide assistance to the other non-pilot municipalities in their vicinity.

Interpretation of the MFMA

What does the "spirit" of the MFMA mean?

The MFMA spearheads significant public sector reforms envisaged in the Constitution. The reforms were extensively consulted and debated in Parliament and are reflective of both local needs and international best practices. The Minister of Finance has urged all municipalities to apply the "spirit" of the MFMA immediately which means that wherever possible the intent of the reforms are followed in the financial and fiscal practices of a municipality even if the provision has been delayed or exempted for a period of time. An example is the activity of providing loans to officials and councillors, which has been forbidden from 1 July 2004 when the MFMA took effect. A number of municipalities have since ceased this practice.

What is the relationship between the MFMA and the PFMA?

The Public Finance Management Act provides for similar financial and fiscal reforms at the national and provincial sphere of government and parastatals. Both Acts enable managers to manage, whilst holding them accountable for performance and provides for politicians to set the policy priorities. Also these Acts establishes treasury norms and standards, sets out sound and sustainable management principles and provides for the regulations. The PFMA took effect in 1999.

How is the Act reconciled with service delivery needs?

The MFMA aims to modernise budget and financial management practices by placing local government on a financially sustainable footing and supports cooperative government between the spheres of government. This will maximise the capacity of municipalities to deliver services to its residents, users and customers.

Repeal of provincial ordinances and legislation

When are ordinances and statutes not in line with the MFMA going to be repealed and who is responsible for this?

The National Treasury has been in constant contact with the national Department of Provincial and Local Government, Provincial Treasuries and Provincial Local Government Departments to expedite the repeal of ordinances. It is critical that specific provisions of the ordinances that conflict with the MFMA are brought to the attention of the National Treasury by submitting such issues to the MFMA email address directly.

ROLES AND RESPONSIBILITIES

Roles of different spheres of government

What are the roles and functions of Provincial Treasury during the phase-in period?

Whilst the primary responsibility of the Provincial Treasuries is to manage the financial affairs of the province, the MFMA provides for greater involvement of treasuries in the regulation and management of the financial affairs of municipalities and to take appropriate measures including monitoring, support and intervention, if necessary.

Currently the capacity within Provincial Treasuries is varied and is being enhanced to be able to fulfil the role and responsibilities as provided for in the MFMA. These responsibilities have been delayed until 1 July 2005 to allow time for planning and institution building.

In general the functions of Provincial Treasuries vis a vis the MFMA are described in Section 5 (3), (4) and (7) and are to:

- Promote co-operative governance amongst role-players
- Assist NT in enforcing compliance by municipalities with the MFMA
- Monitor municipal budgets & outcomes
- Monitor submission of reports by municipalities
- Assist municipalities with budget preparation
- Exercise powers and perform duties as delegated by NT
- Take intervention measures (breach of Act)
- Share all info received with NT

It is also envisaged that the two provincial departments support each other to ensure smooth implementation of the Act. We encourage municipalities to contact their Provincial Treasuries where appropriate. In the interim and during the transitional period please do not hesitate to contact the National Treasury should you be unsure or unclear of the various roles and responsibilities of different role-players.

What other measures are in place to support municipalities and what is the role of the Provincial Departments of Local Government in relation to the MFMA?

Municipalities should be aware that the National Treasury chairs a working group consisting of the relevant national, provincial departments and SALGA to promote a consistent and coherent approach to the implementation and interpretation of the MFMA. This initiative also aims to develop other support measures to assist municipalities and to limit duplication of effort in the implementation of the Act. Other key stakeholders such as the STATS SA, FFC, Financial Institutions, Office of the Auditor-General are regularly consulted.

Besides the powers contained in the Structures, Systems and Property Rates Acts, the MFMA does envisage a supportive role for the Provincial departments of local government to assist municipalities. There is also an alignment of the regulatory regime governing municipalities. We encourage municipalities to contact the Provincial Treasuries with regard financial management issues. Moreover, the MFMA requires a much closer working relationship between the two provincial departments in sharing of information, monitoring and support to municipalities and other measures will ensure smooth implementation of the Act.

What is the role of the District Municipality and how will this be monitored?

The District Municipalities must implement the MFMA like all other municipalities. However, the District municipalities are also required to play a supportive role in terms of the cooperative government chapter of the MFMA. Specifically with relation to ensuring coherent programmes, planning, budgeting, allocation and transfer of resources and effective communication with all local municipalities within its jurisdiction.

What is the role of other government structures in the implementation of the MFMA?

It is a primary responsibility of a municipality to build its own capacity. The Constitution of the Republic also requires the Provincial and National Government to support and build the capacity of municipalities. In order to improve capacity for service delivery other departments have also developed measures to support this broader initiative. Hence it may be required that these efforts are co-ordinated and aligned to obtain

the best results. National Treasury is working with other stakeholders to streamline initiatives in this regard, including developing appropriate transfer mechanisms to eliminate duplication. For example, the internship programme that places graduates from previously disadvantaged communities in municipalities for a period of 2 years and the unit standards based financial management qualifications approved by the South African Qualifications Authority (SAQA) are two examples in this regard.

What measures are being undertaken to ensure common approach in implementing the Act?

A working group chaired by the National Treasury, representing Departments of Provincial Treasuries and Local Government, DPLG and SALGA has been established during 2004. Regular meetings have been held. The purpose of the working group is to provide a forum for discussion of common issues relating to the exchange of information and experiences, to build capacity and identify implementation risks, to decide on best approaches to address these, and to ensure a sound and consistent implementation strategy for the benefit of all participants in the process. These meetings are supported by regular District and Local workshops convened by the two provincial departments. Regular circulars and guide material is also prepared and distributed to all municipalities via email.

What are the implications of non-compliance with the MFMA?

Non-compliance with the MFMA carries consequences. For example, senior managers performance contracts contain key implementation reforms which will have to be achieved. If not then this could result in withholding of performance rewards. Chapter 15 of the MFMA deals with financial misconduct, disciplinary proceedings, criminal proceedings, offences and penalties.

Depending on the severity of the non-compliance, funds to the municipality could be withheld. Also, individuals committing an offence will have to be dealt with by the judicial system. Persistent non-compliance or failure could lead to provincial and national intervention.

Consequential action by Provincial and National Government through discretionary and mandatory intervention could result in instances of failure to provide services and when serious financial problems arise.

Responsibilities of mayors and political office bearers

What is the difference between political guidance / oversight and interference

Section 52 of the MFMA outlines the general responsibilities of the mayor. However, other sections in the MFMA provides for policy setting, oversight, monitoring, reporting and deals with the concept of “interference” in the execution of administrative responsibilities. The Act provides for separation of the policy-making role and administrative execution of those policies. The role of councillors therefore includes providing general political guidance over the fiscal and financial affairs of the municipality. In providing such general guidance the mayor may monitor and, to the extent provided by the MFMA, oversee the exercise of responsibilities assigned to the accounting officer and chief financial officer, but may not interfere in the exercise of those responsibilities. In this context, interference refers to the act of hindering, obstructing or impeding the official from carrying out their responsibilities as required by the Act.

What is the Mayor’s exact role in terms of budgetary processes and related matters?

Section 53 outlines the role of the mayor in relation to the budget process and related matters. The mayor must -

- 1 (a) *provide general political guidance over the budget process and the priorities that must guide the preparation of a budget;*
- (b) *co-ordinate the annual revision of the integrated development plan in terms of section 34 of the Municipal Systems Act and the preparation of the annual budget, and determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and*
- (c) *take all reasonable steps to ensure—*
 - (i) *that the municipality approves its annual budget before the start of the budget year;*
 - (ii) *that the municipality’s service delivery and budget implementation plan is approved by the mayor within 28 days after the approval of the budget; and*
 - (iii) *that the annual performance agreements as required in terms of section 57(1)(b) of the Municipal Systems Act for the municipal manager and all senior managers—*
 - (aa) *comply with this Act in order to promote sound financial management;*

<p>(bb) are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan; and (cc) are concluded in accordance with section 57(2) of the Municipal Systems Act.</p> <p>(2) The mayor must promptly report to the municipal council and the MEC for finance in the province any delay in the tabling of an annual budget, the approval of the service delivery and budget implementation plan or the signing of the annual performance agreements.</p> <p>(3) The mayor must ensure—</p> <p>(a) that the revenue and expenditure projections for each month and the service delivery targets and performance indicators for each quarter, as set out in the service delivery and budget implementation plan, are made public no later than 14 days after the approval of the service delivery and budget implementation plan; and</p> <p>(b) that the performance agreements of the municipal manager, senior managers and any other categories of officials as may be prescribed, are made public no later than 14 days after the approval of the municipality's service delivery and budget implementation plan. Copies of such performance agreements must be submitted to the council and the MEC for local government in the province.</p>
<p>What procedures and structures should be put in place to allow Mayors to monitor the performance of the accounting officer and CFO?</p>
<p>The MFMA is aligned with other legislation to ensure a logical and considered range of tools are available for the mayor and council to regularly monitor performance of officials. These include the requirement to provide monthly projections for revenue and expenditure and quarterly projections for service delivery targets as part of the "service delivery and budget implementation plan" (s.1 definition), which must be monitored and reported back to council.</p> <p>The MFMA requires these performance measures to be linked to the performance objectives contained in the annual performance agreements with the municipal manager and all senior officials, as required by the Municipal Systems Act.</p> <p>Monitoring performance will become easier in time as municipalities develop and implement clear statements of their strategies and long-term goals. These are articulated in the IDP, approved by "votes" in the budget and split into quarterly projections in the SDBIP that explains, on an annual basis, how council will implement its budget and service delivery goals in line with the IDP. In-year reporting will provide opportunities for management, the mayor and council to review progress and implement remedial action where required and the annual financial statements, annual and oversight reports will be the final account of how the municipality has performed for the year.</p>
<p>What is the role of the Speaker and other structures?</p>
<p>All councils must elect a speaker that presides at meetings; ensures that the council meets at least quarterly, maintains order during meetings and performs other duties delegated by the council. The speaker is designated as mayor in certain councils, depending upon the type of municipality prescribed in the Municipal Structures Act.</p> <p>In terms of the MFMA the speaker has the same role as that assigned to a councillor and does not carry additional financial or fiscal responsibilities.</p>
<p>How do the provision of MFMA apply to plenary councils?</p>
<p>The MFMA, section 3, is clear that the Act applies to a plenary council in the same manner that it applies to all municipal councils.</p> <p>The MFMA applies to—</p> <p>(a) all municipalities;</p> <p>(b) all municipal entities; and</p> <p>(c) national and provincial organs of state to the extent of their financial dealings with municipalities.</p> <p>In the event of any inconsistency between a provision of the MFMA and any other legislation in force when the MFMA takes effect and which regulates any aspect of the fiscal and financial affairs of municipalities or municipal entities, the provision of the MFMA prevails.</p>
<p>What mayoral powers and duties can be delegated?</p>
<p>The powers and duties assigned in terms of the MFMA to the mayor may:</p> <p>(a) in the case of a municipality which has an executive mayor referred to in section 55 of the</p>

<p><i>Municipal Structures Act, be delegated by the executive mayor in terms of section 60(1) of that Act to another member of the municipality's mayoral committee;</i></p> <p>(b) <i>in the case of a municipality which has an executive committee referred to in section 43 of that Act, be delegated by the council of the municipality to another member of the executive committee; or</i></p> <p>(c) <i>in the case of a municipality which has designated a councillor in terms of section 57(1) of this Act, be delegated by the council to any other councillor.</i></p> <p><i>A delegation—</i></p> <p>(a) <i>must be in writing;</i></p> <p>(b) <i>is subject to any limitations or conditions that the executive mayor or council, as the case may be, may impose; and</i></p> <p>(c) <i>does not divest the mayor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.</i></p> <p><i>The mayor may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.</i></p>
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Responsibilities of municipal officials

<p>What is financial management?</p> <p>The MFMA covers a wide range of financial matters and is all encompassing of financial administration and financial management. Financial management and administration refers to application of allied disciplines such as economics, accounting, public finance, statistical sciences, information technology and etc.</p> <p>The typical financial manager will have the following attributes and be able to utilise this knowledge in effective management:</p> <ul style="list-style-type: none"> • Allocation of scarce resources in a strategic and most appropriate manner, • Prioritisation of objectives and effective cost benefit analysis skills, • Utilisation of relevant data for accurate estimations and projections, • An understanding of the best use of modern technology, and • A focus on appropriate disciplines in decision-making
<p>What is a Chief Finance Officer?</p> <p>The position of CFO is defined by the MFMA and is administratively in charge of the Budget and Treasury Office (s.81). The CFO should have all the attributes of a Financial Manager to be able to provide the objective advice to the MM and Council. The MFMA also allows specific delegations from the accounting officer to the CFO, which cannot be delegated to any other official.</p> <p>A municipality must appoint a person that undertakes the role of the CFO and should ideally assign such a title to the individual holder of that post. Conflicting titles and positions only add to the confusion and often undermine the intent and spirit of the legislation. The MFMA provides for a uniform position titled "CFO" who must be part of the senior management of the municipality that reports directly to the Municipal Manager.</p>
<p>On what criteria should CFOs /AOs be appointed and how will smaller municipalities meet this?</p> <p>All municipalities must have a municipal manager pursuant to section 82 of the Municipal Structures Act, who is the "accounting officer" in terms of the MFMA and appoint a person to undertake the role of the CFO. In small municipalities it is possible that the Municipal Manager could be required to undertake the duties of the CFO. It is prudent for the roles and responsibilities of the AO and the CFO to be clearly articulated in the contracts of employment that relate to those positions.</p> <p>The accounting officer must ensure that they have wisely delegated responsibilities under the Act to a person capable of carrying out those responsibilities, as the accounting officer cannot delegate accountability.</p> <p>The phase-in provisions of the Act require professional finance officials to meet prescribed competency levels by 1 July 2006 (s. 83). Municipalities should ensure that current officials are trained and retrained to meet these competency levels or if unwilling or unable to, then new officials with the appropriate qualifications are appointed. Current officials performing these tasks could be appointed on an acting capacity until such time their qualifications are updated.</p> <p>All municipalities (large or small) will need to ensure that they can attract appropriately qualified personnel.</p>

<p>What are the exact roles of the CFO and Municipal Manager?</p> <p>The municipal manager is the accounting officer in terms of chapter 8 of the MFMA and carries significant responsibilities detailed throughout the MFMA. The role of the Chief Financial Officer is defined in chapter 9 of the MFMA.</p>
<p>Should new finance staff be appointed on an acting basis and what are the implications?</p> <p>Section 83 of the MFMA states that the AO, CFO, senior managers and other financial officials must meet prescribed financial management competency levels. This section has been delayed and does not take effect until 1 July 2006 for all municipalities. The delay has been necessary to allow time for finalising the development of competency levels.</p> <p>Accordingly, in the absence of prescribed competency levels during the initial implementation phase of the MFMA, municipalities are encouraged, wherever practicable, to appoint personnel to senior financial positions on an “acting” basis. This provides the municipality with maximum flexibility once the competency levels are prescribed.</p>
<p>Under what circumstances can delegations be made?</p> <p>Many roles and responsibilities prescribed in the MFMA may be delegated. As a general rule all delegations must be in writing and are subject to such limitations and conditions that the person delegating responsibilities may impose. The MFMA will prescribe where a delegation may either be to a specific individual or to the holder of a specific post in the municipality. It may also be possible for the official who receives the delegation to sub-delegate the power to another official or holder of a specific post in that official's area of responsibility.</p> <p>A delegation does not divest the official making the delegation of the accountability concerning the exercise of the delegated power or the performance of the delegated duty. The official making the delegation may also confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.</p>
<p>How does the MFMA relate to the local government performance management system?</p> <p>The performance management system must take into account all applicable local government legislation including the MFMA. The MFMA contains many provisions relating to the management and execution of budgets, revenue, expenditure, asset and liability, that can be measured and must form part of the performance management system of a municipality and be part of all senior managers contracts. An integral and holistic approach to effective and efficient performance management is key to appropriate measurement of performance and reward.</p>
<p>What assistance can be given to municipalities to set up websites and what information should be placed on the websites?</p> <p>Municipalities must take responsibility for the transparency, accuracy and timeliness of their own information. By making the required information public on their website, the municipality undertakes that they are responsible for the quality and content of the information presented.</p> <p>Municipalities that are not able to post their information on their own website for IT related reasons may provide the information to be published on the District Municipalities website or a neighbouring municipalities website. Alternatively municipalities may approach their Provincial Treasury for support.</p> <p>Section 75 of the MFMA, which requires the information listed below to be placed on the website, comes into effect according to the capacity level prescribed to each municipality. In respect to high capacity municipalities, this is for the 2005/06 financial year information, for medium capacity the 2006/07 financial year and for low capacity, the 2007/08 financial year information. In spite of the phase in provision, all municipalities are encouraged to comply sooner.</p> <p><i>The accounting officer of a municipality must place on the website, referred to in section 21A of the Municipal Systems Act, the following documents of the municipality:</i></p> <ul style="list-style-type: none"> (a) <i>The annual and adjustments budgets and all budget-related documents;</i> (b) <i>all budget-related policies;</i> (c) <i>the annual report;</i> (d) <i>all performance agreements required in terms of section 57(1)(b) of the Municipal Systems Act;</i> (e) <i>all service delivery agreements;</i>

- (f) all long-term borrowing contracts;
- (g) all supply chain management contracts above a prescribed value;
- (h) an information statement containing a list of assets over a prescribed value that have been disposed of in terms of section 14(2) or (4) during the previous quarter;
- (i) contracts to which subsection (1) of section 33 apply, subject to subsection (3) of that section;
- (j) public-private partnership agreements referred to in section 120;
- (k) all quarterly reports tabled in the council in terms of section 52(d); and
- (l) any other documents that must be placed on the website in terms of this Act or any other applicable legislation, or as may be prescribed.

A document referred to above must be placed on the website not later than five days after its tabling in the council or on the date on which it must be made public, whichever occurs first.

Internships

Must all municipalities appoint interns?

The employment of interns is compulsory for all municipalities accorded financial assistance in the form of the Municipal Financial Management Grant. A major objective is to accelerate the implementation of MFMA and to build future capacity in local government finance management. Such municipalities may also apply to LGWSETA to participate in the basic learnership in municipal finance and administration.

What are the criteria for the selection of interns and do currently serving personnel qualify?

The municipal finance management internship programme (MFMIP) is a capacity building initiative. Existing employees can join MFMIP if they are willing to subscribe to the requirements (academic qualification, duration of the internship, lectures and formal evaluation of skills) governing the MFMIP. New graduates from universities and technical colleges are preferred so as to present them with opportunities to acquire practical workplace skills. Existing employees, if they fulfil the requirements, have the opportunity to undertake studies leading to the post-graduate qualification in municipal finance.

The term 'recently qualified graduate' refers to someone who holds a three-year degree or diploma without extensive previous experience in municipal finance.

Does a diploma from a technikon meet the entry requirements for the internship programme? Why does the NT's skills transfer efforts have to favour recently qualified interns?

A three-year diploma from a technikon meets the entry requirements for the internship programme. Presently, three-year university degrees and technikon diplomas in economics, accounting and finance are preferred so as to accelerate the implementation of capacity building in municipal finance management.

Existing municipal employees require their skills to be assessed through the application of the principle of recognition of prior learning. If this principle is applied, then the duration of training contracts is bound to be less than two years. One of the capacity-building objectives is to provide the unemployed graduates with training opportunities. This, therefore, does not contradict the municipal finance management qualifications where entry conditions require a first degree or relevant experience. Ideally, interns should be recent graduates in need of practical work place skills. However, municipalities may have to rely on skills development funds allocated to SETAs to train existing employees so as update changes in municipal finance management. For this reason, currently employed young men and women (who have the same academic qualifications as interns) have sufficient training opportunities as the interns.

What content should be provided in formal training of interns who is responsible to provide this?

Municipal Managers and CFOs are responsible for the interns. The contents of the required formal internship training are clearly described in the unit standards registered with SAQA. The content of the unit standards cover the following priority areas:

1. Strategic leadership and management (including people management)
2. Strategic and operational financial management
3. Financial and performance reporting
4. Governance, professional ethics and values
5. Auditing and accountability
6. Partnership and stakeholder relations
7. Change, risk and project management
8. Procurement and contract management

Accredited ETPs are required to ensure that the content of formal training (lectures) offered is in line with registered unit standards. Visit the NT website where you will find training providers and programmes that have been evaluated by the validation committee.

How is the intern programme funded and what sources of funds are available?

All municipalities currently receive the Municipal Finance Management Grant (FMG). The purpose of the grant is to assist municipalities to implement financial reforms required by the MFMA. Municipalities may want to consider continuing the intern programme through own funding once the FMG has been concluded to ensure the continued development of municipal finance management capacity.

In addition to the grant, municipalities may apply for training support through the Skills Development Levy provided by LGWSETA. For a municipality to be able to access these funds for capacity building, it has to complete a Skills Plan and to submit this to LGWSETA. The generic format of a Skills Plan can be found in Government Gazette No: 20865 (February 2000). Kindly use this as a guideline – municipalities will have to comply with the requirements of the LGWSETA.

The receipt of grants will depend on how well the Skills Plan meets the development strategy of LGWSETA. The measurement period is from April and municipalities must ensure the Skills Plan is submitted to LGWSETA by no later than June of the relevant calendar year.

Note that a municipality seeking recovery of training costs against the levy payment scheme by way of grants must:

- have registered with SARS in terms of the Skills Development Levies Act 1999;
- have actually paid their levies to SARS; and
- be up to date with levy payments to SARS / their SETA.

How are salaries / benefits of the interns determined and at what level should it be set?

A remuneration package for interns is an issue dealt with in the employment contract. Municipalities have discretionary powers to set the salary level after taking cognisance of the financial realities and priorities of the municipality. Prices of goods and services vary from region to region. For instance, monthly rentals for houses and food prices vary from region to region. For this reason, all interns may not receive similar salary benefits. The NT also recognises the fact that some municipalities may opt to award salary adjustments to interns who have shown progress in their internship activities.

The NT realises that issues in municipal finance management are changing fast. For instance, accounting standards change regularly as do formats of financial statements. Municipal officials need to study further towards formal qualifications in order to keep up to date. For this reason, municipalities are encouraged to budget for training costs for the interns and make use of skills development levy to improve qualifications of municipal officials.

How can transfer of skills to interns be guaranteed in those municipalities with little or no capacity and how can the capacity of mentors be developed?

Instances where incompetent municipal officials are used to train interns should be avoided. The MFMA does not allow municipalities to employ, as senior managers, incompetent persons who cannot manage municipal finances or guarantee transfer of skills. Municipalities without capacity to supervise and mentor interns should not take on interns.

Municipalities are therefore expected to utilise the available resources to develop mentoring skills among its technically competent managers. Municipal officials assigned to supervise and/or mentor interns are expected to include *their responsibilities towards interns* as one of the key performance areas of their employment contract. In addition the municipal manager and the CFO are to ensure that interns work with senior officials including consultants engaged to work on special projects so that skills are transferred.

What happens if the intern does not complete the full 2 years of the contract?

The internship is designed to last for at least 24 months. An intern is not expected to serve as an intern for a period in excess of 36 months. An internship period of 36 months is considered by municipalities to be the most appropriate duration to enable full development of the interns. Interns who do not complete the two years will not be awarded the certificate in municipal finance management for they would not be considered to have received adequate training in the identified priority areas. In addition, the intern will be required to reimburse a portion of costs incurred by the relevant municipality in providing training for the expired portion of the internship period. Interns leaving before the completion of the programme may also jeopardise their future prospects of employment within the local government sector.

What happens to interns after internship has been completed and how can skills developed be retained?

A municipality that is required to provide an intern with opportunities for training does not have to provide permanent employment to that intern on successful completion of the internship period. Since skills acquired during the internship period are transferable, other municipalities are at liberty to employ interns that successfully complete the proposed training programme. Interns must always consider improving their qualifications as it makes them marketable within the local government sphere as well as in the broader community. Interns are therefore employable at any other municipality. The present internship programme should be viewed as complementary to the efforts made by LGWSETA to develop skills for municipalities.

Municipalities that wish to retain interns after the two-year internship period should provide career paths sufficient to retain the interns and ensure that multi-year budgets provide for appropriate funding.

Will the internship programme meet the need for strategic managers?

The internship programme will partially, in the short-run, contribute towards addressing the skill shortage at senior management level. The skills development strategy is expected to take a broader view (beyond the present internship programme) by targeting at the lower, intermediate and senior levels. This broader approach is supported by the learnerships in municipal finance and administration established and administered by LGWSETA. Through this broader capacitation approach, the municipalities will be able to identify employees that can be earmarked for future CFO positions. The NT realises that municipalities may not be able to have the present interns as CFOs in the next two to three years as there are internal candidates who already have substantial experience. A two-year internship period is a starting point for the development of future managers for the local government sphere.

In order to keep current personnel (who have 10 years or more working experience plus a university degree) positive about the future, municipalities will have to support them to undertake training in the relevant SAQA accredited qualifications in municipal finance management.

How can information about the intern programme best be shared and disseminated?

The NT will be arranging workshops to meet with the CEO and CFOs to explain the importance of the internship programme. Follow-up meetings may be held with the interns to explain their roles. Proposed intern workshops will include a motivational component to prepare the interns for future challenges and changes. This is in addition to website, newsletter and e-mail facilities for which interns can use to share their knowledge and experience.

It is NT's view that the implementation of the MFMIP should apply the "hub concept", which provides internship development and implementation to use hubs where training providers and beneficiaries work together. The hub concept will allow a number of municipalities to come together and work with relevant education and training provider for meaningful management of the training process.

Is the internship programme a once off initiative?

While the Finance Management Grant is currently being applied to employ these interns, municipalities who see merit in this system should provide for the continuation of the programme in the municipality's multi year budget. It is hoped that local government as a whole will see the need to continue developing financial management capacity in the sector.

FINANCIAL FUNCTIONS

Municipal Budget and Treasury Office

<p>What is the exact role of the budget and treasury office?</p> <p>The Budget and Treasury Office comprises the CFO, persons contracted to work in the office and all other officials allocated by the accounting officer to the CFO.</p> <p>The MFMA does not attach a specific role to the office but rather it attaches the roles and responsibilities to the accounting officer and CFO (see chapters 8 and 9). Both the accounting officer and CFO may delegate their roles and responsibilities in accordance with the MFMA.</p>
<p>What are the competencies levels required by different officials?</p> <p>The competency levels are being finalised. However, it is imperative that any training undertaken in the MFMA is consistent with the recently approved Unit Standards. Training courses and providers will be posted on the National Treasury website once the training material has been reviewed. A validation committee has been established, chaired by the National Treasury and consisting of various stakeholders to review quality and content of training courses. Kindly refer to the MFMA website for updated information.</p>
<p>What can a municipality do if the current CFO does not have the required competencies?</p> <p>It is recommended that only persons with the prescribed competency levels, or who are working towards these competency levels, should be appointed to the role of CFO. In the interim period while the competency levels are being developed, it is recommended that the CFO position be filled in an acting capacity.</p> <p>In cases where the CFO position is already filled and the incumbent does not possess the necessary competency levels once prescribed, the municipality must consider all options to rectify this. Options will include training, redeployment and, where appropriate, termination of a contract of employment.</p>
<p>When would it be reasonable / acceptable to use consultants?</p> <p>A well managed municipality must balance its internal skill levels to ensure it can deliver efficient and sustainable services. From time to time it is necessary to bring in external expertise where these are not available internally. Should this be the case then it should be written into the consultancy contract that these scarce skills must be transferred to permanent municipal staff and that these will be measured as the contract progresses.</p> <p>Every effort should be made to appoint sufficient internal staff with the necessary qualifications, experience and ability to ensure the new financial management practices are implemented and continue to operate into the future.</p> <p>Often the funds used to appoint short-term consultancies could be used to appoint permanent staff that can develop the skills over time and ensure that the skills remain in local government finance management throughout that person's career.</p> <p>As the MFMA contains significant reforms it stands to reason that unscrupulous consultants will emerge who seek to exploit municipalities.</p>

Budgets and financial planning

<p>Why are municipal, provincial and national budget cycles not aligned?</p> <p>This aspect has been researched and it was found that aligning financial years will have little positive effect and would in fact make the 284 municipal budgets a more difficult task to prepare. With the different cycles between provincial/national governments (begin April) local government (begin July) it enables useful national and provincial information to be shared with all municipalities in the form of gazetted three-year allocations to municipalities prior to the requirement for municipalities to table their budgets. It further assists in planning and implementation of programmes and projects with the current 3 to 4 months advance notice of allocations.</p>
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How is a “vote” defined and who is responsible for the vote?

Vote is defined in section 1 of the Act and means one of the main segments into which a budget of a municipality is divided for the appropriation of money for the different departments or functional areas of a municipality.

The minimum level of a vote should be aligned with the Government Finance Statistics (GFS) sub function. This is an international standard of classifying service delivery functions across all of government. Measurable performance measures can then be provided for each vote. The municipality may structure their accounting hierarchy to suit local needs but at a minimum must budget at the vote level described here. See MFMA circular for more guidance.

Responsibility for a vote rests with the municipal official that is delegated, either by the council or the municipal manager, responsibility to manage the vote in accordance with the MFMA.

The important point is that the “Vote” should no longer be seen as every single line item in the budget. National Treasury is encouraging municipalities to set the “Vote” at a high level to give effect to the principle of allowing managers to manage and be held accountable for performance.

Can funds be transferred from one vote to another?

This depends on the level council sets the “Vote”. An example is to set the vote for total operating expenditure, total capital expenditure and total revenue for each GFS sub-function within a directorate. There may be further levels of detail below this level between which funds could be moved providing the measurable performance objectives set for each “vote” and revenue source will still be achieved.

However, once the council adopts the budget any variation at the “Vote” level must be made by the council through an “adjustments budget” (section 28). The council must reduce the revenue and expenditure if there is a material under-collection of revenue, it may also appropriate additional revenues to revise or accelerate spending programmes already budgeted for (see specific instances in the Act). Council may also transfer projected savings in one vote towards expenditure in another.

In the normal course of a municipal financial year, it is advisable to pass an adjustment budget once a year only. Should an adjustment budget be passed more than once a year then it will become extremely difficult to measure performance of officials due to the short time lines required for execution of programmes and projects.

How much of the annual budget should be allocated to operational expenses?

It is general good practice to allocate between 10 and 20 percent of the total budget to capital investments. However, the extent of the apportionment will depend on the fiscal position of the council, level of services offered in the municipality, economic development activities, infrastructure backlogs and the urgency in which council has prioritised addressing its challenges. The extent of capital investment also requires a thorough understanding of the financial implications and the long-term sustainability of the Municipality.

May a municipality budget for a discretionary fund for the Mayor?

Like all expenditure votes in the budget, a budget allocation must be made in an accountable, open and transparent manner, including how such funds are being utilised. It should be noted that any transactions would form part of the normal audit of the municipality. Moreover, any activity should be operated in a transparent manner within the policy direction set by council and the administrative direction of the accounting officer. As such the council must set clear policies on the purpose and use of such public resources and the accounting officer must ensure compliance with this policy when authorising expenditure. It is useful to be reminded of the banking account and cash management provisions in this context.

How can the budget be effectively linked to the IDP and aligned with other government budgets and sector departments?

The budget and IDP process should be combined into one seamless process. Section 21 requires the Mayor to table to Council ten months before the start of the budget year a time schedule outlining key deadlines for budget preparation, IDP review, budget policy review and consultative processes. A firm understanding of sections 17, 21, 22, 23, and 24 will assist the municipality in achieving the effective link between the IDP and Budget and alignment with sector departments etc.

Refer to the MFMA circular No 13 (SDBIP) that provides a suggested methodology for the preparation of individual implementation plans for each senior manager to ensure the IDP and budget are linked.
How does the SDBIP relate to the IDP and performance management system?
The SDBIP is a detailed plan for implementing the municipality's delivery of services as outlined in the IDP and its budget. It must include service delivery targets and performance indicators for each quarter and these must be linked to the annual performance agreements of senior managers (refer to explanation of SDBIP in section 1 as well as sections 17(3)(b)(d), 24(c)(iii)(iv), 53 & 69. This effectively binds together the strategic goals set by council with the annual budget and requires progress to be measured towards achieving these goals. See MFMA circular for more details on SDBIP.
Should the budget and SDBIP not be approved together?
It is advisable to present the draft budget and draft service delivery and budget implementation plan (SDBIP) to council concurrently as this provides a more comprehensive picture and will assist council in its deliberations on the budget. The mayor must approve the SDBIP within 28 days of the adoption of the budget. Whilst it does not require council adoption, the SDBIP forms the basis of regular reporting back to council and the community. It is feasible for the budget and SDBIP to be merged into a single document for presentation to council provided the information required by section 1 of the MFMA (definitions) is included.
Must budgets be submitted to National Treasury or Provincial Treasury after phase in?
Yes. During the interim period and as we build the capacity of Provincial Treasuries, the accounting officer must submit both an electronic and 3 printed copies of the budget and appropriate return forms, immediately after it is tabled in council, to the NT, other municipalities affected by the budget and any prescribed national or provincial organ of state (s. 22 and 24). It is required of those budgets when tabled and when finally adopted. Furthermore, specific guidance on submission of budgets will be provided in circulars as the practice and capacity is developed.
Do municipalities have to await communication from National or Provincial Treasury before budgets can be implemented?
No, the NT or PT may comment on the municipal budget that must be considered prior to finalisation by council. It is not necessary to stop programmes or projects whilst awaiting communication. However, it should be noted that the municipal budget must be consistent with the uniformity of the budget, be supported by relevant tariffs and policies, be within the inflation projects and growth parameters, and give effect to national economic policies, administered pricing and equity provisions. Moreover, budgets should be balanced and any tariffs levied should be within the affordability levels of the community. Budgets will be subjected to evaluation and review to measure their credibility, sustainability and achievability. Also refer to National Treasury Budget Circular for more guidance.
What consultation process is required in terms of budget preparation?
When preparing the budget, section 21(2) requires the mayor to consult with: <ul style="list-style-type: none"> • the relevant district municipality and all other local municipalities in the area, in the case of a local municipality • all local municipalities within its area in the case of a district municipality • the relevant PT • when requested, the NT • any prescribed national or provincial organs of state <p>In addition, the mayor must take into account the IDP (which must be reviewed and revised), the national and provincial budgets, the national fiscal and macro-economic policy, the annual DoRA and any agreements reached in the Budget Forum. For those municipalities facing severe backlogs in specific sectors, for example, water and sanitation, should also consult the line sector department (DWAF) to ensure the appropriateness of sector plans.</p> <p>Once the budget is tabled before council the public must be invited to submit representations, which are to be considered by the council along with any representations received from the PT, NT or prescribed organs</p>

of state. The mayor has an opportunity to respond to all submissions and, if necessary, to revise the budget and table amendments for consideration by the council.

Also refer to National Treasury Circular for more guidance and advice.

Banking and cash management

Can a municipality have other bank accounts over and above its primary bank account

Yes. The MFMA requires every municipality to open and maintain at least one bank account in the name of the municipality. The municipality must nominate one account to be a *primary bank account* for the purpose of depositing prescribed allocations and grants and may choose to operate other accounts as it determines appropriate (but one must be the primary account). Other bank accounts may be opened for financial management and administrative purposes, however an appropriate audit trail of all account transactions should be maintained including regular bank reconciliations.

Given that only the accounting officer or CFO may withdraw funds from the primary bank account, it is unadvisable to use the primary bank account for daily municipal banking needs (see question on withdrawals below).

Who may authorise withdrawals (or be signatories) on the municipal bank account(s)?

The accounting officer is accountable for and must administer all bank accounts.

Most municipalities will have multiple bank accounts, in which case only the accounting officer or the CFO may withdraw funds from the primary bank account. The accounting officer may, however, authorise other senior financial officials to withdraw funds from the remaining accounts (in addition to the accounting officer and CFO)

Whilst unlikely to occur in practice, where a municipality has only one bank account (which is also the primary bank account in terms of the MFMA) in addition to the accounting officer and CFO, the accounting officer may authorise any other senior financial official to withdraw funds from this account (sections 10 & 11).

Note that any authorisation to a senior financial official to withdraw funds from a bank account must be in writing.

Will the details of the primary bank account be widely accessible?

No, National and Provincial Treasuries will provide this information to departments that transfer funds to municipalities. It is imperative that municipalities advise the National Treasury, in writing and in advance, of any changes to primary bank account information to ensure that communication with other transferring departments is effective.

Revenue

What framework is in place for cash management and investments?

Kindly refer to the enabling regulations on cash management and investments. Further support material that covers more technical aspects of cash management and investments can be expected shortly. In the interim, municipalities are requested to review their current policies and practices to ensure that they meet the MFMA requirements, including being mindful of the new supply chain management policy when procuring in this regard.

How should municipalities manage compulsory contributions to revolving funds?

Revolving funds, such as compulsory contributions to a capital fund required under a provincial ordinance, must comply with the MFMA. The MFMA prevails in the event of an inconsistency between the MFMA and any other legislation in force which regulates any aspect of the fiscal and financial affairs of a municipality or entity. However in this instance we also draw you attention to the new accounting standards, which restrict the number of funds to be created.

What can municipalities do about intergovernmental payments?

Where a dispute arises over payments incurred between a municipality and another government department, agency or municipality the parties concerned must take all reasonable steps to resolve the matter promptly. This includes exploring all options, engagement with officials and political office bearers. If National Treasury is not a party to the dispute the parties must report the matter to the National Treasury and may request that National Treasury to mediate the dispute (refer s44 of MFMA) only after all avenues are exhausted. The use of costly external legal consultants, expertise or advice should be avoided. See DORA 2005 provisions that support co operative governance between the spheres, and between Category B and C municipalities.

What process can the municipalities use to collect outstanding billings?

Municipalities should ensure that they have a coherent set of revenue policies. These range from tariff policies through to indigent and collection policies and should be reviewed with each budget to ensure that the budget is credible [21(1)(a)]. If these policies all talk to each other, the problem of outstanding billings (debtors) should be greatly reduced.

Furthermore, municipalities should ensure that revenue budgets are realistically projected and what is billed is actually collected [18(1)(a)]. Municipalities should avoid the practice of including unrealistic revenue projections in the budget to cover "wish list" expenditure items only to cut the expenditure budget mid way through the year. This raises expectations of the community for service delivery, which cannot be achieved.

Municipalities should understand their customer groups in terms of ability to pay, affordability and debtors outstanding. The aged debtors monthly return form should be tabled in council (to be submitted to National Treasury each month) is a very useful tool for understanding the profile of a municipality's debtors and hence assists in developing collection strategies. The form requires ageing by revenue type (property rates, electricity tariffs, etc) and by customer group (residential, business, government etc). Municipalities should clean up data and understand their debtors profile before any attempts at outsourcing collection activities. Measures must be in place to ensure that this does not end up in a costly exercise in futility for the municipality. Also appropriate provision for working capital and bad debt write-off policies will ensure in sustainable municipal finances.

Chapter 9 of the Municipal Systems Act covers credit control and debt collection.

Expenditure

What is the precise definition of irregular, fruitless and wasteful expenditure?

Section 1 of the MFMA provides the following definitions:

"irregular expenditure", in relation to a municipality or municipal entity, means—

- (a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;
- (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
- (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or
- (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure";

"fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

"unauthorised expenditure", in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes—

- (a) overspending of the total amount appropriated in the municipality's approved budget;
- (b) overspending of the total amount appropriated for a vote in the approved budget;

- (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
- (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or
- (f) a grant by the municipality otherwise than in accordance with this Act;

What procedures should be followed in relation to unauthorised expenditure?

Section 171(4) and 172(3) outline the procedures to be followed by a municipality in relation to unauthorised expenditure and other illegal practices. Section 173 prescribes the offences and 173(4) relates specifically to offences committed by a councillor.

What process should be followed in order to set municipal tariffs and taxes

Municipalities should set tariffs and taxes through the approval of the annual budget sections 17(3)(a), 24(2)(c). Sections 74 and 75 of the Municipal Systems Act covers the adoption of a tariff policy and the adoption of by-laws to give effect to the tariff policy.

Grants, allocations and transfers

How can allocations and transfers to municipalities be made more efficient?

Chapter 5 of the MFMA requires the promotion of "cooperative government" by national, provincial and local government, in accordance with the Constitution. This requires all spheres to promptly meet financial commitments towards each other.

Section 36 requires the National and provincial governments to notify all proposed allocations and the amounts to each municipality during each of the next three financial years. This will provide increased funding certainty for all municipalities.

Moreover, discourse as part of the National and Provincial budget processes also assist to ensure efficient and effective allocations and transfers to municipalities. See 2005 DORA for more details.

How does DoRA work and how is the equitable share calculated?

The Division of Revenue Act is adopted annually by Parliament. The policies underpinning allocations and the reporting requirements are contained therein. The Division of Revenue Act changes from year to year as do the allocations. Multi year allocations are announced per municipality with the other years indicative. The schedules to the Act contain conditional, unconditional and in-kind allocations.

Specific sections in the Division of Revenue Act covers the transition given the phase in of the MFMA.

It is critical that municipalities and other key stakeholders review the schedules, supporting material and explanations that is contained in the National Budget documentation. Refer you to the Ministers Budget Speech, explanatory memorandum, responses to the FFC recommendations and the Budget Review for a wealth of information on this subject. You can also obtain hard copies from the National Treasury or via the treasury website.

Borrowing (debt) and investments

What can municipalities do about inherited borrowing (debt)?

All borrowing (debt) incurred by a municipality must be managed and repaid by the municipality. In the case of an amalgamation of municipalities, the assets and liabilities (including borrowing (debt) are combined and must be managed by the new amalgamated municipality.

Section 51 of the MFMA prohibits the national or provincial government from guaranteeing the debt of a municipality or entity except to the extent provided by chapter 8 of the Public Finance Management Act.

Municipalities facing difficulty in repaying loans when they become due should immediately contact the lender and make appropriate arrangements. It is also imperative to note that failure to take corrective measures may result in provincial or national intervention in a municipality.

<p>If government will not bail out municipalities, how does the municipality maintain effective service delivery?</p> <p>The continued functioning of a municipality is dependant on sustainable Council decisions. This necessitates careful analysis of the institution including all expenditure and revenue decisions. Clearly a municipality cannot spend more than it collects.</p> <p>The council determines priorities for expenditure and these priorities can only be undertaken within the resource constraints of the municipality.</p> <p>A municipality must regularly review and analyse the costs, benefits, levels of service, of providing services and facilities, including all indirect expenses such as management and governance. Responsibility to avoid, identify and to resolve financial problems rests with the municipality itself. Where a municipality is unable to manage its own finances then a case may exist for a provincial intervention.</p>
<p>Are rolling overdrafts allowed?</p> <p>Overdrafts are deemed short-term loans (debt) and can only be incurred in accordance with section 45 of the MFMA and section 230 of the Constitution This limits the use of short-term borrowing (debt) and requires a resolution of council and full repayment of the loan (debt) within the financial year.</p> <p>A rolling overdraft implies short-term loan (debt) that is carried forward to the following financial year(s). If this is the case then it is not permissible under the MFMA.</p> <p>Council may approve a short-term agreement pursuant to section 45(3) with a lender for a credit facility to be accessed as and when required. This may include a line of credit or a bank overdraft facility but must be repaid in full within the financial year.</p> <p>According to phase in provisions, municipalities must clear their existing rolling overdrafts by 1 July 2008. This will be closely monitored to ensure that there is a reduction in levels from 1 July 2004 with a minimum reduction of 25% per annum. This should be disclosed in the annual financial statements. The phase out has been structured so that prudent financial management practices over the coming four years will address the unsustainable situation.</p>
<p>Must all short-term loans be cleared at the end of each year?</p> <p>Yes. According to phase in provisions, municipalities must clear their existing rolling overdrafts by 1 July 2008. This includes all loans taken up to fund recurrent expenditure. Ideally the phase out could take the form of reducing the levels of overdraft by 25 per cent each year to reach zero at the target date of 30 June 2008.</p>
<p>On what basis can municipalities enter into long-term borrowing (debt)?</p> <p>Section 46 specifies that long-term borrowing (debt) may only be incurred for:</p> <ul style="list-style-type: none"> • capital expenditure • Refinancing existing long-term loans (debt) subject to complying with section 46(5) <p>And any long-term loan (debt) must be consistent with the capital budget approved by council.</p>

Financial reporting

<p>What is the difference between GRAP and GAMAP and which is applicable?</p> <p>GRAP is Generally Recognised Accounting Practice as envisaged in the Constitution {s216(1); PFMA (s89(1)(a) and MFMA (s122(3)). GRAP establishes accounting standards with which municipalities and entities' must comply and covers issues such as the preparation of annual financial statements.</p> <p>GAMAP refers to the previous municipal accounting practices and provides interim standards as GRAP is progressively introduced.</p>
<p>What is the detailed implementation phase-in plan for GRAP compliance?</p> <p>The phase in of GRAP is similar for that of the MFMA. This consistent approach is undertaken to ensure effective compliance and links budget reforms and GRAP implementation. Refer to the phase in provisions for section 122(3). High capacity 2005/06, Medium capacity 2006/07, Low capacity 2007/08.</p>

What format should the Annual Financial Statements and Annual Reports take?

The Annual Financial Statements and Annual Reports should be in the formats as provided by the National Treasury in its guiding circulars. The contents of the Annual Financial Statements have been defined in the MFMA as; a statement of financial position, a statement of financial performance, a cash-flow statement, any other statements that may be prescribed and any notes to these statements. The Annual Report contents have been outlined in section 121 of the MFMA and includes a copy of the annual financial statements, Auditor-General report, annual performance report, an assessment of any arrears on municipal taxes and service charges, assessment of municipal performance against measurable objectives for revenue collection, corrective action in response to Audit Report, any explanation to clarify issues in the financial statements, any information determined by the municipality, recommendations of the Audit committee, etc. Kindly refer to the National Treasury MFMA Circular No 10 for more guidance on the format and content of Annual Report and Annual Financial Statements. The emphasis should be on quality and timeliness of information provided and disclosed.

Please clarify when the 2003/04 annual report must be tabled. Circular number 11 states that the annual report must be tabled in council by 31 January. However, according to the phased implementation dates, section 127 of the MFMA is not effective till 1 July 2005.

Section 127 requires the annual report to be tabled in council within 7 months of the end of the financial year (ie 31 January). This section applies to all municipalities for the 2004/05 annual report.

In respect to the current 2003/04 annual report, the transitional arrangements will create different approaches depending on the capacity level proclaimed for each municipality. The transitional period, and the repeal of S46 of the Systems Act, requires the National Treasury to apply provisions of the 2004 Division of Revenue Act, which enables matters such as the annual report format and due dates to be determined. These requirements are outlined in MFMA Circular No 11.

Section 121 requires the council to deal with the annual report within nine months after the end of the financial year (ie 31 March). This applies to high capacity municipalities for the 2003/04 annual report. Although not compulsory for medium and low capacity municipalities, circular 11 encourages them to work towards this same date as it will assist with compliance in the following years. This is also consistent with advice provided in budget circular 2 (dated 18 August 2004).

In conclusion, High capacity municipalities are required to have dealt with the 2003/04 annual report by 31 March 2005. Ideally the annual report should be tabled 2 months earlier (31 January 2005) to allow sufficient time for consultation, although this is not compulsory until next year. Even though this date has now passed high capacity municipalities should aim to table the report as soon as possible in order to meet the 31 March deadline. Medium and low capacity municipalities are encouraged to follow these dates to the best of their ability and in doing so will apply the spirit of the legislation.

What format should the financial reports take to allow non-financial people to understand the content?

Statutory financial reports are produced in a prescribed format and must comply with accounting standards. They are designed to ensure an efficient and accurate representation of financial and fiscal affairs and by their nature are not easy to read by laypersons. There is always an assumption that users of financial statements and reports have a "reasonable" understanding of financial practices. Users unable to understand financial reports may obtain the services of qualified persons to assist in interpretation.

Municipalities are encouraged to produce simplified financial information for public information, in addition to statutory reports. These reports should be enhanced with graphs, diagrammes and other easy to use language.

In-year reporting for management and council oversight should be displayed in such a way as to be readily understandable by decision makers.

In what format should monthly reports be presented?

In-year reporting for management and oversight purposes should be simple and easy to understand. It should be in a form that meets the internal requirements of the municipality, structured in terms of the Vote and in a manner that reports on performance against the budget.

Reporting to National Treasury must be in the prescribed format. Refer to National Treasury website for new reporting formats Appendix B. This has been tested in pilot municipalities, will be used for monitoring purposes and should be submitted electronically. Ability to submit these forms timeously will provide an indication of the capacity of the municipality to comply with the MFMA.

<p>Is there one standardised report format for all reporting requirements?</p> <p>Kindly refer to the MFMA circular on reporting. This contains guidance and formats that assist in quality reporting.</p>
<p>How can the timing of budgets, reporting and auditing best be aligned?</p> <p>We encourage municipalities to work through the detailed MFMA implementation plan, budget process and financial management calendars supplied with the MFMA circulars. Focus on Chapters 4 and 12 will greatly assist in the development of plans given the processes and timeframes in the budgeting and reporting chapters.</p>
<p>How can the process of the auditing of AFS by the AG be improved?</p> <p>The process can be improved through ongoing communication with the Office of the Auditor-General including separate meetings with Internal and External audit teams and senior management of the municipality. The preparation of audit plans and working papers also support the timely execution of the audit. It is also advisable to make available municipal finance staff during the audit process to be on call to render support and answer questions as they arise. Timely submission of the Annual Financial Statements, in the correct format and supported by proper disclosure will also ensure a smooth audit. It must also be understood that the Office of the Auditor-General will be required to audit all municipalities and its entities during the period from August to December. Hence, municipal entities must gear up to meet the timelines required in the law. The National Treasury has requested the Auditor-General to conduct interim audits so as to ensure timely outcomes.</p>
<p>Who will assist with queries relating to the specimen financial statement?</p> <p>The specimen financial statements have been extensively consulted during 2004. The drafts issued during May and June 2004 have been modified and will be issued early in 2005. It should be borne in mind that as the Accounting Standards Board issues new standards for treatment of specific accounting transactions and new regulations are issued in terms of the MFMA, the disclosure requirements would constantly have to be updated for these changes. Queries on the specimen financial statements should be directed to the MFMA email address. The National Treasury will endeavour to respond as soon as possible to all queries.</p>
<p>What are the disclosure requirements in the MFMA?</p> <p>There are many issues that need to be disclosed. They relate to disclosures in Annual Financial Statements, Annual Reports and other general disclosures that relate to borrowing, general information, contracts, etc. Specific GRAP standards, the MFMA, particularly sections 123 to 125 and the Division of Revenue Act require disclosures.</p>

Supply chain management

<p>Must municipalities have a SCM policy, within the prescribed framework, in place by July 2004?</p> <p>The supply chain management framework (sections 110 – 116) has been delayed to take effect from 1 July 2005 for all municipalities. Draft regulations were published for comment in the Government Gazette in November 2004. In the interim, municipalities are encouraged to review their policies including, thresholds, internal procedures, delegations, systems, staff competencies, etc. Supporting material including guidelines will be updated and posted on the National Treasury website for easy reference.</p>
<p>When does the barring of Councillors from serving on tender committees become effective?</p> <p>From 1 July 2004 no councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer (s.117).</p>

<p>Why are Councillors barred from serving on tender committees?</p> <p>Part of the broader reform programme across all spheres of government has been to ensure that the political, executive and administrative functions are clearly articulated. Councillors are required to set policy and the administration is required to execute that policy. Council, in discharging its oversight role, must monitor performance and hold the administration accountable for delivery.</p> <p>The MFMA makes a distinction between the role of Councillors as the policy making body, and the administrative functions headed by the municipal manager and executed by the municipal staff. The acquisition of goods and services, whether through quotations or other means of competitive bidding, is an administrative function.</p>
<p>Who should sit on tender committees and how should it be structured?</p> <p>The Accounting Officer should appoint the following bid committees:</p> <p>Bid specification committee -this committee is responsible for compiling bid (tender) specifications. The specifications committee may be comprised of one or more officials from of the municipality or entity and, where appropriate, include external specialist advisors.</p> <p>Bid evaluation committee - this committee is responsible for the evaluation of bids received and to verify legal criteria and past performance history of the tenderer. Membership of this committee as far as possible should comprise officials from the department requiring the goods of services and at least one supply chain management practitioner of the municipality or entity. This committee should evaluate all bids received and submit a report and recommendation(s) regarding the award of the bid(s) to the adjudication committee.</p> <p>Bid adjudication committee - this committee should comprise at least four senior managers of the municipality or municipal entity of whom at least one member is the CFO (or delegate) the senior manager responsible for the bid (or delegate), at least one senior supply chain management official practitioner and technical experts from the municipality or entity. The committee should consider the report(s) and recommendation(s) made by the evaluation committee. Depending on the delegations granted by the accounting officer, the adjudication committee could make the final award of the bid, or make a recommendation to the accounting officer to make the final award. The CFO of the municipality or municipal entity should chair the adjudication committee.</p> <p>The evaluation committee and adjudication committee must comprise different members to ensure that a transparent review of the evaluation and award is undertaken. Members of evaluation committees may present their reports to the bid adjudication committee and clarify any uncertainties. Such members should, however, not have any voting power on the adjudication committee.</p> <p>The bid specification, evaluation and adjudication process must be within the ambit of section 217 of the Constitution as well as the provisions contained in the PPPFA and its associated regulations, and the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, and its associated regulations.</p>
<p>Under what conditions can outsiders (i.e. not officials) be appointed to tender committees?</p> <p>The accounting officer may procure the services of outsiders as advisors to assist in the execution of the supply chain management function. This could include a technical expert in a relevant field to the tender being considered. The services of an outsider should be obtained through a competitive bidding process. No outsider may, however, form part of the final decision-making process regarding the award of bids, as this will counter the principle of vesting accountability with the accounting officer. The accounting officer cannot delegate decision-making authority to an outsider.</p>
<p>Who appoints the tender committee, what is the term of office and the terms of reference of the committee?</p> <p>The accounting officer or his / her delegate should appoint the various bid or tender committees. Delegations from the accounting officer to the individual members of the adjudication committee must be in writing. The term of reference for each committee has been dealt with above and will also form part of a comprehensive guide to be issued shortly.</p>

Can a councillor from one municipality sit on the tender committee of another municipality?
No, councillors are not allowed to form part of tender committees, as this is in contravention of section 117.
What is the role of Council in relation to the awarding of tenders?
The council has an oversight role in ensuring that the accounting officer executes the council's policy. The council must adopt a supply chain policy within the framework and ambit of applicable legislation, including the MFMA, the PPPFA and the BBBEE Act.
Will Council be held responsible for the performance of the contractor in relation to their oversight role?
No, the accounting officer will have to monitor the performance of the contractor in keeping with the contract for services. Council is responsible to ensure its SCM policy is implemented by the accounting officer, who is accountable for the performance of any contractor engaged by the municipality. The council is required to act where the policy fails, or to ensure appropriate action is taken when the accounting officer fails in his/her duties.
What process is to be followed if a tender recommendation is not approved?
Section 114 states that if a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation. This does not apply if a different tender was approved in order to rectify an irregularity. It is imperative that a clear articulation of the reasons for such deviations are provided and supported by comments from the municipal manager or adjudication committee making the recommendation.
What is the role of the accounting officer / officials in relation to SCM
The accounting officer must ensure that a SCM unit is established and that SCM policy is implemented as an integrated part of the financial management of the municipality / municipal entity. This will include appropriate delegations to senior officials and the establishment of regular reporting lines to council, who must provide oversight of the process.
When will the prescribed competency levels be available and what should municipalities do in the interim?
It is anticipated the competency levels will be finalised mid 2005 and will take effect on 1 July 2006 (section 119). Accredited training courses in SCM verified by the NT will be available prior to this date – municipalities should not attend training unless accredited and verified through the NT verification process.
Can SCM procedures be waived for emergency goods and services and for procurement below a certain value?
A provision to cater for such circumstances is captured in the Regulations.
How can a municipality best manage unsolicited bids?
A municipality may consider unsolicited bids in very exceptional circumstances and only in accordance with the strict criteria in the Regulations and SCM policy adopted by council.
Should amendments to contracts be allowed and under what conditions?
Section 116(3) states that a contract may be amended by the parties concerned only after the reasons for the proposed amendment are tabled before council (or the parent municipality in the case of a municipal entity) and the local community has been given notice of the intention to amend the contract or agreement and invited to submit representations.

What are the implications for tenders that were awarded after the publishing of the Act, but before the implementation date?
For the interim, these should be dealt with in terms of the MFMA Circular No. 2 of 2004.
How can the PPPFA best be applied?
The PPPFA can be implemented through council policy, the regulations and appropriate training of staff.
How do the provisions on SCM relate to smaller municipalities?
The provisions on SCM contained in the MFMA and regulations are applicable to ALL municipalities.
How can SCM process best be structured and managed?
It should follow the process and procedures contained in the framework regulations
When should consultants be used in the SCM process?
When the accounting officer decides that there is not enough capacity and / or capability to deal with certain aspect of SCM, the services of a consultant(s) may be acquired by means of a competitive bidding process.

Internal audit unit

Can the internal audit unit be outsourced?
Yes, the internal audit function may be outsourced if the municipality or municipal entity requires assistance to develop its internal capacity and the council of the municipality or the board of directors of the entity has determined that this is feasible or cost-effective to do so. (refer s165 of MFMA). It is strongly recommended that smaller municipalities and entities consider sharing resources and this is best coordinated at the district level. It is imperative to ensure that proper transfer of skills by outside parties to municipal officials form an integral part of the contract with any outsourcing. Should scarcity of skills persist then it may be necessary to develop such skills at a district municipality to be shared with its local municipalities as may be appropriate. Refer to more details on presentations from the "Internal Audit Indaba"
What can a municipality do if it cannot afford an internal audit unit?
A municipality may consider the options of outsourcing and sharing this service with other municipalities. Refer to above question for further advice.
Can internal audit units be shared?
Yes. This is being encouraged due to the limited resources.
What will the role of the internal audit unit be and will there be uniform audit standards?
The role of the internal audit unit is to prepare a risk-based audit plan and an internal audit programme for each financial year and advise the accounting officer and report to the audit committee on the implementation of the internal audit plan and matters relating to internal audit, internal controls, accounting procedures and practice, risk and risk management, performance management, loss control and legislative compliance (including the MFMA and the annual Division of Revenue Act) (refer s165 of MFMA). Guides will be developed should the need arise for uniform audit standards.

Audit committees

Who can serve on audit committees and who should chair the committee?
An audit committee must consist of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity. The chairman must be appointed from one of the members who is not in the employ of the council or municipal entity. Note that no councillor may be a member of an audit committee (Refer s166 of MFMA).
What criteria should be used for selecting audit committee members?
Audit committee members should be selected amongst persons experienced in government or business with qualifications in accounting, finance, management, audit or another related field. Ideally they should have had some experience in the management of an organisation of a similar size to that of the municipality or the municipal entity.
Can an audit committee be established at DM level and shared by local municipalities?
Yes. Given the capacity and resource constraints in some areas of the country it is recognised that effective sharing of skills and expertise is a critical means for compliance with the MFMA. However, municipalities must ensure value for money is achieved in these sharing arrangements and also that any conflict of interests do not exist. See s166(6) of MFMA.
Can a councillor from one municipality serve on the audit committee of another municipality?
Councillors may not be members of an audit committee. See s166 (5) of the MFMA.
Who pays the members of the audit committee?
The municipality is responsible for remuneration of audit committee members, although a council may wish to recoup costs associated with services rendered to municipal entities. See s166 of MFMA.
What is the role of the audit committee and how does it relate to other committees?
An audit committee is an <i>independent</i> advisory body which must advise the municipal council, political office-bearers, the accounting officer and the management staff of the municipal entity on matters relating to internal financial controls and internal audits, risk management, accounting policies, financial reporting and information, performance management, effective governance, legislative compliance and other issues referred by the municipality or municipal entity. See s166 of MFMA. It is not a committee of council.

Municipal entities

What should be done with those boards of entities where Councillors are currently serving or are involved with the entity?
Municipalities must take immediate steps to ensure that councillors are no longer members of boards of municipal entities – this is a requirement of section 93F of the Municipal Systems Act. The implementation of this section has been prioritised. See question 11.3 on the 12 Urgent Priorities Checklist published with MFMA circular No. 5.
What is to happen to current municipal entities that may be disallowed in their present form?
Council must review existing entity arrangements in accordance with the Municipal Systems Act and take appropriate decisions to disestablish such entities including deciding on the new structure.

<p>What is the correct budgetary and reporting process for municipally entities?</p> <p>Budget and reporting requirements for municipal entities are outlined in Chapter 10 of the Municipal Finance Management Act – generally the budget process and reporting requirements reflect those of parent municipalities. These requirements are summarised in the MFMA implementation plan template (refer worksheet on entities) available on the National Treasury website published with MFMA circular No. 7. Furthermore the mayor of the municipality must coordinate the budget process of the municipality and include details of the municipal entity when consulting communities (s. 21 and MFMA circular No. 10 on Budget Process 2005/06).</p>
<p>What is the role of the Auditor-General with regard to municipal entities</p> <p>The Auditor-General is now responsible for the auditing of all municipal entities and must report on the accounts, financial statements and financial management of each municipal entity (refer s92 of MFMA).</p>
<p>How will conditions of employment of staff of entities be determined?</p> <p>The parent municipality of the municipal entity must first determine the upper limits of salary, allowances and other benefits of the chief executive officer and senior managers and then monitor and ensure that the municipal entity reports to the council on all expenditure incurred by that municipal entity on directors and staff remuneration matters (refer s89 of MFMA).</p>
<p>Why are councillors and officials excluded from boards and directorships of entities and how can they exercise control if they are excluded?</p> <p>The council must remain the primary oversight authority over the municipal entity. Councillors therefore cannot be on the board of the entity and then oversee the affairs of that board as there would be a conflict of interest.</p> <p>Council sets policy and the municipal manager must ensure this policy is carried out including contract agreements for service delivery and budgets for entities etc. Control is exercised through review of in-year reporting, annual financial statements, and annual and oversight reports.</p>

Public-Private Partnerships

<p>What is the difference between PPP's and outsourcing?</p> <p>The key difference between a PPP and outsourcing is that PPP's transfer substantial financial, technical and operational risk to the private party. Whereas outsourcing involves the private sector performing a task on behalf of the municipality without taking much risk. PPP is a one-stop-shop. All services are provided through one contract while outsourcing can have many contracts for similar services.</p> <p>A PPP involves sharing of responsibilities i.e. the government and private sector contribute resources to ensure that the project materialises. Concessions are made between the private and public sector. National Treasury portrayal of PPP's reflects a concept of outsourcing or the ordinary contracting of a supplier to offer services and be reimbursed in return.</p> <p>A PPP is a contractual arrangement between a public sector party and a private entity where the private sector <u>performs an institutional function</u> OR <u>uses state property</u> in accordance with output specifications for a significant period of time, in return for a benefit.</p> <p>It involves a substantial transfer of all forms of project <u>risk</u> (financial, technical, operational) to the private sector.</p> <p>Public sector role shifts: Government is purchaser of services and/or enabler of the project - monitor and regulator of service delivery, no longer its direct administrator.</p> <p>An example of a PPP is a serviced accommodation where the private party invests in designing, financing, constructing, furnishing and equipping a building and providing gardening, security, cleaning services. Their compensation for this 'working experience' is based on the quality and availability of the services. Non-performance can result in penalties – accumulation of penalties over a specified amount may result in termination of the contract.</p> <p>An example of outsourcing is when a public party recruits an Information Technology specialist to write a software programme for it. Once the software has been developed and tested the private party walks out and the technical and operational risk sits with the public party. There is no financial investment made by the private party.</p>

<p>What happens to existing PPP's once the Act is implemented?</p> <p>Existing contracts will continue on the original terms unless there are substantial variations, amendments or extensions. 'Views and recommendations' of the Treasury must be sought in those instances. Also see section 178 of MFMA that requires that, "All municipalities must within three months of the date on which this section takes effect, submit to the National Treasury a list of – ...all public-private partnerships to which the municipality is a party, with a value of more that one million Rands in total per annum....". Requirement of Section 178 is primarily to build a database of existing PPP's. See MFMA circular No. 5 and the relevant return forms for further guidance.</p>
<p>How are unions going to be addressed in the establishment of PPP's?</p> <p>Objections to this mechanism in service delivery have mainly resulted from unfounded perceptions. This is due to the "fear of the unknown". PPP processes must include a comprehensive consultation and communication plan. The process must be consultative and open, while keeping it competitive and transparent. There has been a net growth in employment in PPP's at the national and provincial spheres.</p> <p>National Treasury's role in PPP's is limited to ensuring affordability, value for money and risk transfer in terms of Section 120 of MFMA. Labour issues must be dealt with before a public party can demonstrate affordability, value for money and risk transfer.</p>
<p>How do PPP's relate to community economic empowerment, capacity building and BEE?</p> <p>The Expanded Public Works Programme requires labour intensive methods to be used in certain kinds of projects. Not all of these projects may be good candidates for PPP's.</p> <p>The Expanded Public Works Programme does not prescribe the procurement process. If the labour and skills development requirements are contractually transferred to the private party and the contractors used are accredited by the Department of Public Works then there is no reason why the objectives of private participation and labour usage cannot be acquired simultaneously. In fact PPP's provide a longer-term employment creation solution.</p>
<p>What is the relationship between Section 120 of the MFMA and Section 78 of the Municipal Systems Act?</p> <p>PPP's are not service solutions, but procurement options. In case of a municipal service, Transaction Advisors must be recruited to follow the process prescribed in Section 78 of the MSA as well as Section 120 of the MFMA. These processes are not mutually exclusive, but complementary. In fact, it is envisaged that the process will start with compliance with the requirements of Section 76 that prescribes that the public party must explore internal mechanisms and external mechanisms including other public parties. Only when these options have been exhausted in terms of the requirements placed in Section 77 around the scope of the service, will the municipality look at the requirements under Section 78.</p> <p>MFMA Section 120 reinforces the requirement of conducting a feasibility study while ensuring that each project must demonstrate affordability, value for money and risk transfer before it is contracted.</p> <p>The exact process to be followed in terms of MFMA Section 120 has been laid out in the regulations. The methodology for conducting the feasibility will be guided by other supporting material.</p>
<p>What happens if a PPP fails to deliver?</p> <p>Like all other contracting arrangements, PPP contracts must be drafted and negotiated carefully. This can only be achieved if qualified professional transaction advisors (including law firms) are recruited and managed by qualified dedicated municipal project managers.</p> <p>Once the contract is signed it must be honoured. However, consistent non-compliance will lead to termination of the contract and this will be provided for in the original contract. Further details and guidance can be obtained from the PPP Unit in National Treasury.</p> <p>The National Treasury can assist municipalities in renegotiating contracts, however the ultimate responsibility lies with the accounting officer.</p> <p>The ultimate responsibility for services delivery lies with the accounting officer of the statutory body – and the accounting officer of the public party in ensuring that the services are provided according to agreed standards. Thus, it is extremely important that proper contract management systems are put in place to ensure that the PPP delivers what it is supposed to deliver and non-compliance is addressed in time and remedial actions taken (including penalties to the private party or termination). The key to all this is a properly drafted and carefully negotiated contract.</p>

What is the lifespan of a PPP concession and what happens to assets at the end of the time-period?

The term of a PPP depends on several factors, including the nature of the service, initial investment required, kind of technology involved, whole life costing and financing terms. The key is to give private party sufficient time to recover cost and obtain a reasonable return on investment – but not too long resulting in excessive profits. If the project involves shorter life cycles, ever evolving technologies, and shorter term financing, then obviously their terms must be shorter. Thus an IT project will have a shorter term compared to a water services concession. Terms must be based on careful financial modelling and sensitivity analysis.

Assets revert to the public party at the end of the concession. PPP's require that these assets be in reasonable condition with sufficient useful life remaining when they are handed over to the public party. It is the responsibility of the public party to monitor the private party and ensure that it actually happens.

What sources of funds can be accessed to establish PPPs?

If the revenue source for a PPP is a unitary charge paid by the municipality and not user charges, the unitary charge must be paid from the municipality's budget or sourced from other government departments should this be available.

How can the process of consultation and information dissemination in relation to PPP's and contracts be improved?

MFMA Section 120 requires that when a feasibility study has been completed, the accounting officer of the municipality must at least for 60 days prior to the meeting of the council at which the matter is to be considered, make public particulars of the proposed PPP, including the report on the feasibility study and invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed PPP.

MFMA Section 120 requires that municipalities obtain the 'view and recommendations' of the National Treasury, Department of Provincial and Local Government and line departments (if applicable) on the feasibility studies on all PPP's. Section 120 also provides for the National Treasury to assist municipalities in preparing the feasibility studies.

Resolution of financial problems**Which provincial department is responsible for interventions and monitoring and what mechanism is used?**

In the first instance, each municipality is responsible for ensuring its financial problems are resolved and may request an intervention in appropriate circumstances. If the MEC for local government becomes aware there is a serious financial problem in a municipality the MEC must promptly consult with the mayor and, after assessing the seriousness of the situation, determine whether it requires a provincial intervention.

The provincial executive decides if an intervention is required (s.136-138).

The MEC for finance in the province must be consulted and can request support from the Municipal Financial Recovery Service, should it be required.

From 1 July 2005 each provincial treasury will be responsible for monitoring compliance with the MFMA (subject to the development of appropriate capacity), the preparation of budgets, the monthly outcome of those budgets and the submission of reports. The NT will undertake the monitoring roles during the transition phase.

What is the difference between discretionary and mandatory interventions and when do these apply?

The provincial executive can determine whether a discretionary or mandatory intervention is warranted.

A discretionary intervention may be necessary when a financial problem has been identified or resulted in a failure by the municipality to fulfil an executive obligation in terms of the legislation or the Constitution.

If as a result of a crisis in its financial affairs, a municipality is in serious or persistent breach of its obligations to provide basic services or is unable to meet its financial commitments then a mandatory intervention is required by the provincial executive.

Forbidden activities

What are forbidden activities and what measures can be taken for current activities that will be considered forbidden?
Kindly refer to the MFMA circular No 8 dealing extensively with this and other related matters.
What constitutes a loan and who is entitled to loans?
Kindly refer to the MFMA circular No 8 dealing extensively with this and other related matters.
How should loans (including car, housing and study) granted before the effective date of the MFMA be managed?
Kindly refer to the MFMA circular No 8 dealing extensively with this and other related matters.



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