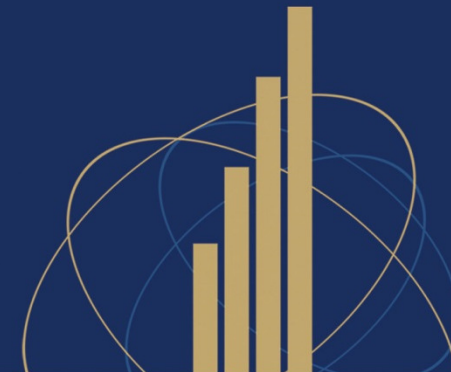




Municipal Budgeting Legislative Framework and Court Cases

Maritz van Zyl Associate Partner Ntiyiso Consulting



CIGFARO

Chartered Institute of
Government Finance, Audit & Risk Officers

www.cigfaro.co.za

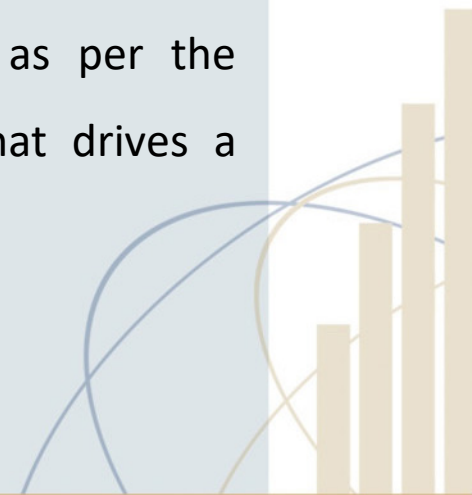
SAQA Recognised Professional Body

Abbreviations and Acronyms

MPRA	Municipal Property Rates Act (no 6 of 2004, as amended)	CFO	Chief Financial Officer
MSA	Municipal Systems Act (no 32 of 2000)	COGTA	Cooperative Governance and Traditional Affairs Department
mSCOA	Municipal Standard Chart of Accounts	DoRA	Division of Revenue Act
MTREF	Medium-term Revenue and Expenditure Framework	GRAP	Generally Recognised Accounting Practice
NERSA	National Electricity Regulator South Africa	GUID	Global Unique Identifier
PPE	Property Plant and Equipment	ICT	Information and Communication Technology
SALGA	South African Local Government Association	IDP	Integrated Development Plan
SALGBC	South African Local Government Bargaining Council	MBRR	Municipal Budget and Reporting Regulations issued in terms of the Municipal Finance Management Act
SCM	Supply Chain Management	MFMA	Municipal Financial Management Act (no 56 of 2003)
SDBIP	Service Delivery Budget Implementation Plan	MM	Municipal Manager
VAT	Value-added tax		

What is a funded and credible budget

- Sensible allocation of realistic expected resources to the achievement of defined performance objectives and priorities in the approved integrated development plan.
- Ensuring that a municipality will be able to continue operating in a financially sustainable manner in the future.
- Utilizing the various MFMA circulars issued by National Treasury
- Golden thread between IDP and budget must be clear as per the expectation of section 26(h) of the MSA 32 of 2000 that drives a “financial plan”
- Includes budget projection for at least the next three years.





Legislative overview



CIGFARO

Chartered Institute of
Government Finance, Audit & Risk Officers

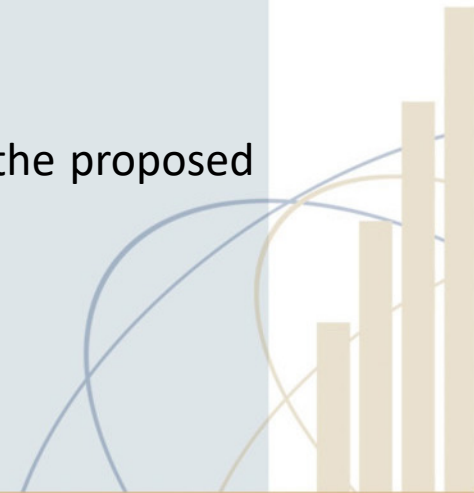
www.cigfaro.co.za

SAQA Recognised Professional Body

Constitution of South Africa

Section 215 of the Constitution

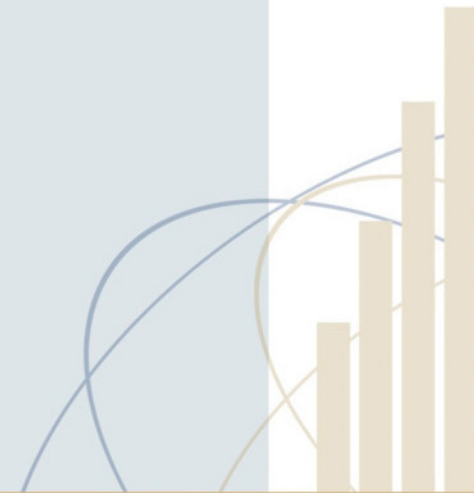
- Requires national, provincial and municipal budgets and budgetary processes to
- Promote transparency, accountability and effective financial management of the economy, debt and the public sector.
- National legislation will prescribe budget formats
 - must be tabled;
 - budgets must show the sources of revenue and how the proposed expenditure will comply with national legislation.



Municipal Finance Management Act

The National Treasury, as part of its oversight role:

- Issues annual (MFMA) budget circulars to guide municipalities and municipal entities with the compilation of their medium-term revenue and expenditure framework (MTREF).
- An objective of the budget circulars is to demonstrate how municipalities must undertake their annual budget preparation to ensure that municipal budgets are funded and comply with the budget and financial reform agenda.



Municipal Budget and Reporting Regulations

The MFMA and MBRR and its prescripts

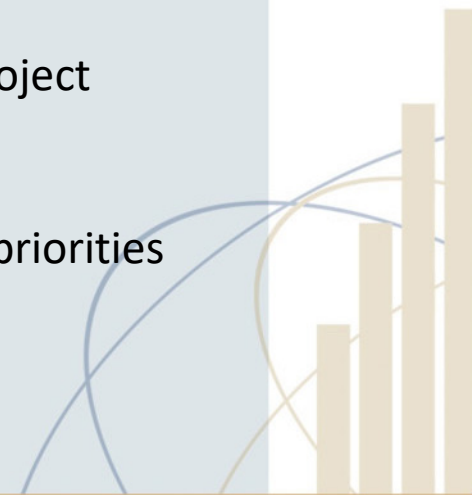
- Chapter 4 (sections 15 to 33) – Municipal budgets
- Chapter 5 (sections 35 to 44) – Cooperative government
- Chapter 7 (sections 53 and 54) – Responsibilities of mayors
- Chapter 8 (sections 68 to 73) – Responsibilities of municipal officials
- Chapter 9 (sections 80 to 83) – Municipal budget and treasury offices
- Chapter 10 (sections 100 and 104) – Municipal entities



Municipal Budget and Reporting Regulations

Section 19 of the MFMA

- Capital projects is a critical component of the budget. It requires municipalities to consider the following BEFORE approving a capital project:
 - The projected cost covering all financial years until the project is operationalised
 - The future operational costs and revenue on the project including municipal tax and tariff implications
 - All new capital projects must be aligned to the IDP priorities



Municipal Budget and Reporting Regulations

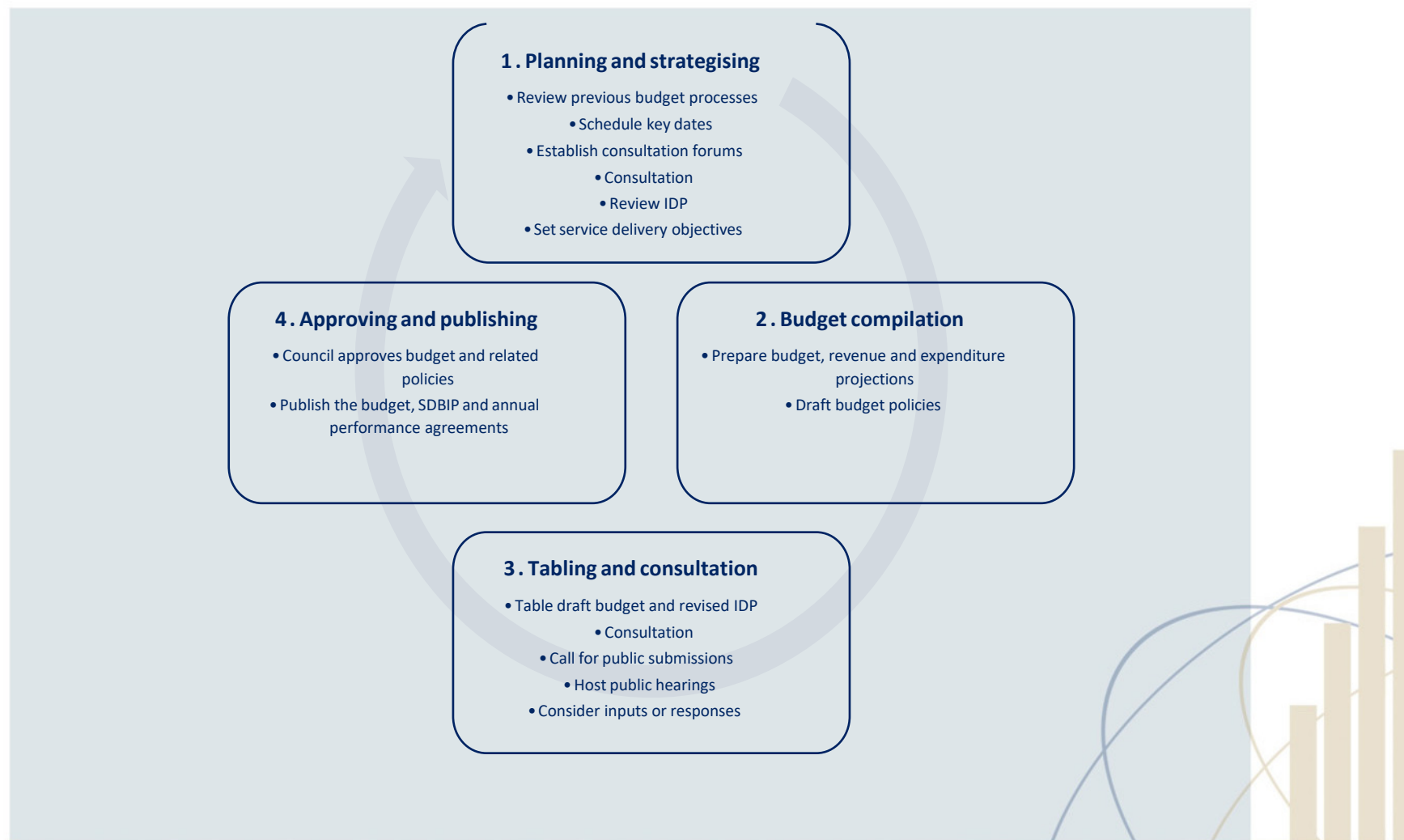
The budget must be completed on the municipal annual budget and MTREF template prescribed by the National Treasury.

It also contains supporting schedules, for example:

- Table A1: Budget summary
- Table A2: Budgeted financial performance (Revenue and Expenditure by functional classification)
- Table A6: Budgeted financial position
- Table A7: Budgeted cash flow



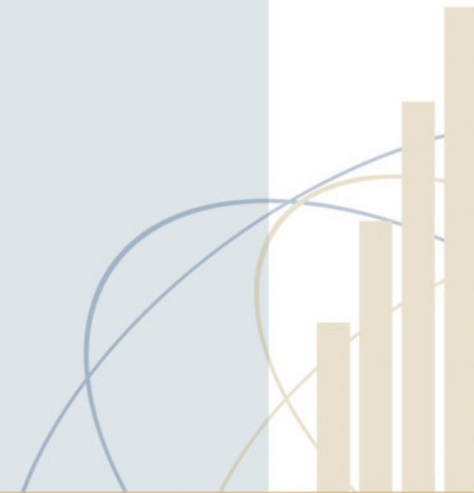
Practical Implementation



Municipal Systems Act

Section 27 (1) of the MSA requires

- Each district municipality to adopt a framework for integrated development planning in the area within a prescribed period after the start of its elected term and after following a
 - consultative process with the local municipalities within its area.
 - This process includes the budgeting process for the district.



Planning the budget

The budget processes commence in August annually - 10 months before the start of the financial year.

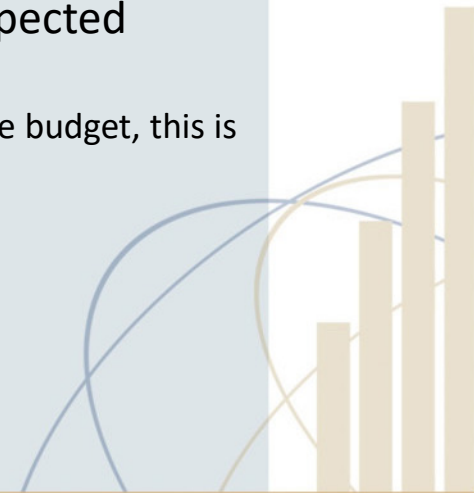
- The Mayor must table a schedule outlining deadline dates for the following at a council meeting:
 - Preparation, tabling and approval of the annual budget
 - Annual review of the IDP and the budget-related policies
 - Tabling and adoption of any amendments to the IDP and the budget-related policies
 - Any consultative processes forming part of these processes



Budget compilation

Budgeting methodologies

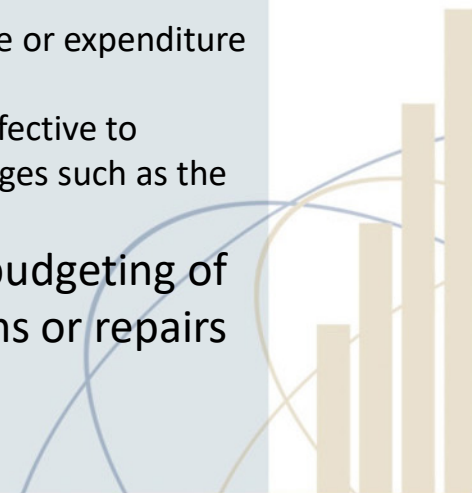
- **Zero-based budgeting** helps a municipality to align the budget with the strategic goals identified in the IDP and is the preferred approach.
 - build their annual budget from zero each year to
 - ensure that all components of the annual budget are cost-effective and relevant. In this manner, the
 - preparer is forced to consider every line item of the budget, rather than only the to
- **Performance-based budgeting** is a budgeting technique that shows the relationship between project funding and project expected outcomes.
 - In an mSCOA environment where IDP projects form the basis of the budget, this is a very relevant budgeting method.



Budget compilation

Budgeting methodologies

- **Activity-based budgeting** uses zero-based budgeting principles and allows municipalities to manage costs more effectively than incremental budgeting.
 - Project outcome is the starting point
 - Expected output determines the necessary activities which are then used to estimate the resources that are required for the budget period.
- **Incremental budgeting** is when a municipality applies a standard percentage increase, decrease or even a set of standard increases for various categories on the previous year's budget.
 - Assumes the previous year's planning as a baseline for the revenue or expenditure programmes.
 - Incremental budgeting can be used in areas where it is not cost-effective to perform zero-based budgeting. It can include sundry revenue charges such as the sale of tender
 - Incremental budgeting should not be used for the budgeting of projects such as capital projects, typical workstreams or repairs and maintenance projects.



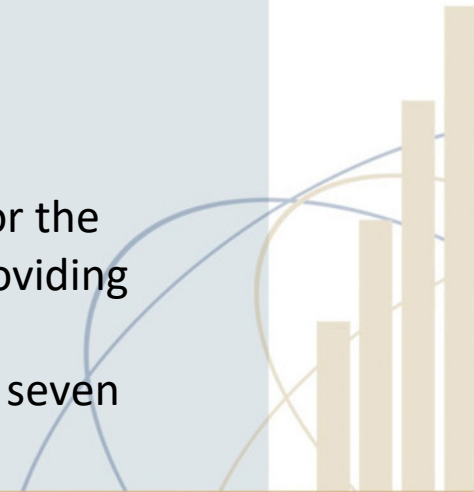
Budget compilation

Capital Budget

- The budget compilation process commences directly after holding the IDP meetings. The process starts with the compilation of the capital budget as it impacts the operating budget.
- Only some of the outcomes identified through the IDP process will be affordable in the MTREF period.
- The available resources must be calculated and the financial plan concluded.
- Funding for the capital budget is generally limited to:
 - Government grants as per the Division of Revenue Act (DoRA)
 - Developer contributions
 - External borrowings
 - Cash-backed reserves
 - Municipal own revenue

External grants are an extremely important funding source for the capital budget as it allows for proper multi-year planning, providing certainty over three financial years.

- An mSCOA compliant capital budget contains data for the seven mSCOA segments.

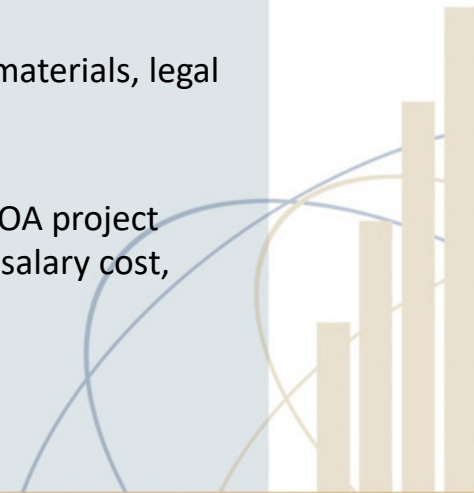


Budget compilation

Operating Budget

The operating budget consists of a few subcomponents being:

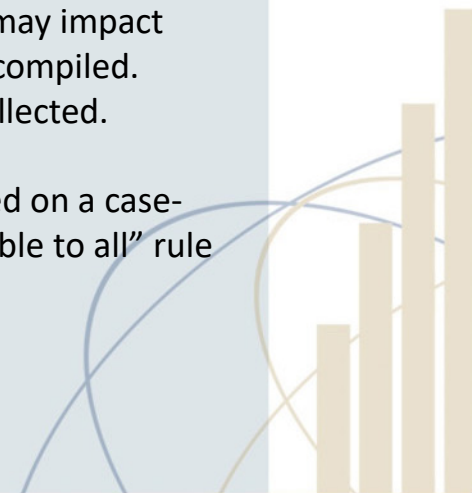
- **Salary budget**
 - Increases for the salaries of MFMA section 56 and 57 managers as well as increases for councilor allowances are determined by parliament and promulgated annually in terms of the MSA and the Public Office Bearers Act.
- **Depreciation and impairment of assets**
 - Accounting Practice (GRAP) 16, 17 and 103.
- **Water inventory**
 - MFMA Circular 107 provides detailed information on the accounting treatment of water inventory (stock). The budget must be compiled following these same guidelines.
- **Other municipal running costs**
 - The variable component includes items such as stationery, cleaning materials, legal notices, bid advertisements and recruitment advertisements.
- **Repairs and maintenance**
 - The repairs and maintenance budget are identified through the mSCOA project segment. The cost element (item) generally includes components of salary cost, inventory and contractors.
- **Interest and redemption**



Budget compilation

Revenue Budget

- Consider the volume of consumption expected for each service per customer group.
- Impact on the volume of sales due to changed circumstances
 - new commercial or residential developments, a
 - change in consumption patterns of services due to load-shedding,
 - droughts, socioeconomic conditions
 - Covid-19 pandemic or other economic factors.
- Guidance given by the National Treasury, provincial treasuries and NERSA.
- Level of cost recovery of the service.
- The projected revenue collection
- Social cross-subsidisation goals.
- Level of grant funding received to determine any unfunded or underfunded mandates.
- Cash requirements for the budget to be funded as required by the MFMA may impact the tariff increases and should be considered when the revenue budget is compiled.
- Impairment of receivables is amounts billed that are not expected to be collected.
- MFMA Circular 51 indicates that each category of rebate should be assessed on a case-by-case basis. It is suggested that municipalities apply the “generally available to all” rule to determine whether an item is revenue foregone or expenditure.



Budget compilation

Revenue Budget

Property Rates MPRA 6 2004

- Consider the funding mix of each service as well as each consumer category.

Court Case Appeal Court Change of tariffs budget process JHB

Tarif structures

Electricity service

- Levying of a basic (availability) charge to cover the fixed cost of a service
- Inclining block tariff structure where customer's consumption is divided into blocks and each subsequent block has a higher rate
- Single rate tariff for residential customers
- Two-part tariff to industrial and bulk customers with a demand charge and variance charge

Water service

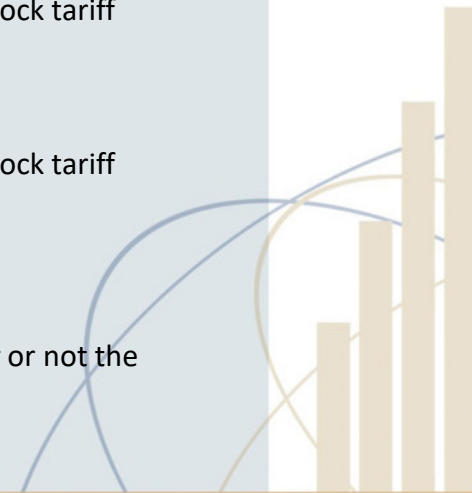
- Levying a basic (availability) charge to cover the fixed cost of a service
- A unit tariff which is payable per kilolitre water consumed, with or without an inclining block tariff structure

Sewerage service

- Levying a basic (availability) charge to cover the fixed cost of a service
- A unit tariff which is payable per kilolitre water consumed, with or without an inclining block tariff structure
- Fixed tariff based on the size of the property
- Fixed tariff based on the category of the property owner

Refuse Removal

- Levying a service charge payable on all properties where the service is available, whether or not the service is utilised by the customer
- Based on the category of user
- Based on stand size

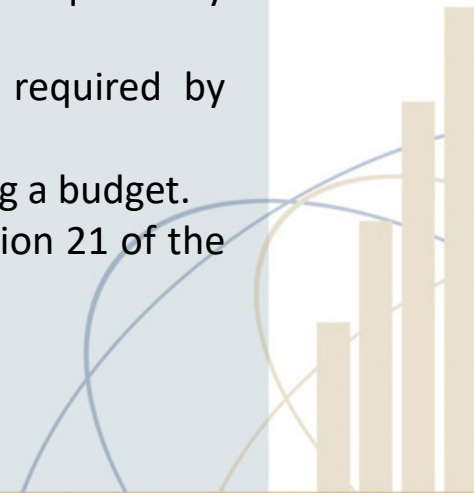


Budget compilation

Funded Budget

The concept of a funded budget was introduced in MFMA Circular 42 issued on 30 March 2007. The following principles are discussed in the circular:

- Moving to accrual-based financial management and the implications for funding a budget.
- Distinguishing between “a balanced budget” and “a funded budget”.
- Full disclosure of revenue and cash.
- Clarity on “realistically anticipated revenues to be collected” as required by section 18 of the MFMA.
- Clarity on “funds not committed for any other purpose” as required by sections 18 and 19 of the MFMA.
- Realistic estimates of expenditure and the implications for funding a budget.
- Clarity on the concept of a “credible budget” as required by section 21 of the MFMA.



Tabling and Consultation

Tabling the Budget

- The draft budget must be tabled at the council at least 90 days before the start of the new financial year. This draft of the budget will be used for the public consultation process before the budget is finally considered for adoption.

Public participation processes

- In terms of Chapter 4 of the MSA, municipalities are encouraged and must create conditions for the local community to participate in the affairs of the municipality. It specifically includes budget preparation. **Court Case example SAPOA v COJ**
- The draft annual budget must also be submitted to the National Treasury and the relevant provincial treasury as well as other organs of state and municipalities that are affected by the budget. LG mSCOA data strings (TABB)

Linking the budget to the SDBIP and performance management

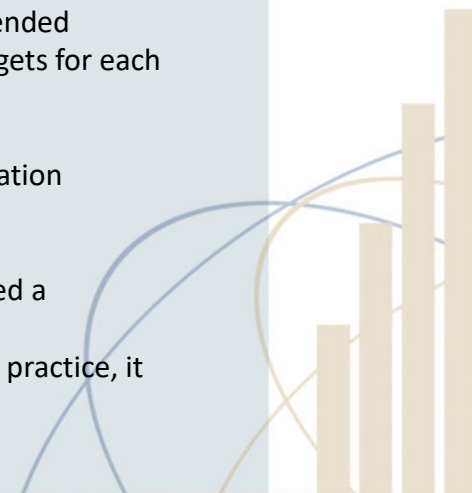
- ensuring that the budget, the SDBIP and the performance management process is aligned.
- The SDBIP is an essential budget management tool that measures compliance with the intended utilisation of allocated budgetary resources as well as the extent to which performance targets for each vote are achieved by the managers responsible for these votes.

Procurement planning

- MFMA Circular 62 introduced the requirement for procurement plans with detailed information

Virements

- Municipalities are allowed to move budgeted funds within a vote. Such a movement is called a virement.
- The MFMA defines a vote as one of the main segments into which the budget is divided. In practice, it will usually mean the departments or principal functional areas of the municipality.



Tabling and Consultation

Adjustments budget

A municipality may revise its approved annual budget through an adjustments budget. The adjustments budget must adjust the estimates of revenues and expenses if a material under-collection of revenues occurs or unforeseen expenses.

- Authorise unforeseen and unavoidable expenses as recommended by the mayor, provided that the budget must be passed within sixty days after the expenses were incurred.
- Authorise the transfer of projected savings on one or more votes towards spending on one or more other votes.
- Authorise spending of unspent funds at the end of the previous budget year. It is subject to certain conditions.
- Correct any errors in the approved budget.
- The MBRR 23 provides the timing and frequency for the adjustments budgets. The following provisions are the most pertinent:
 - The annual adjustments budget must be tabled any time after the mid-year budget and performance plan was tabled in council, but not later than 28 February of the current year.
 - If a national or provincial department allocates or transfers additional revenues to a municipality, the mayor must table an adjustments budget at the next available council meeting. It must be within 60 days of the approval.
 - An adjustments budget considering unforeseeable and unavoidable expenditure must be tabled at the council at the first available opportunity.
 - An adjustments budget to approve rollovers must be approved by 25 August annually.

Tabling and Consultation

Rollover of unspent grants

Conditions must be met for the approval of grant rollovers as per MFMA Circular 108:

- A formal letter, signed by the accounting officer addressed to the National Treasury requesting the rollover of unspent conditional grants in terms of the relevant section of the DoRA. In the 2020 DoRA, it was section 22(2).
- A list of all the projects that are linked to the unspent conditional grants with a breakdown of the amounts allocated and spent per project.
- The following evidence indicating that work on each of the projects has commenced, as applicable to the specific rollover(s):
 - Proof that a contractor or service provider was appointed for delivery of the project before 31 March or
 - In cases where additional funding was allocated during the final year of the project, proof of the project tender and tender submissions published and closed before 31 March with the appointment of contractor or service provider for delivery of service before 30 June
 - Incorporation of the appropriation statement
 - Evidence that all projects linked to an allocation will be fully utilised by the end of 30 June 2022.
 - Attach the cash flow projection for the applicable grant
 - A progress report indicating percentages on the status of each project's implementation that includes an attached legible implementation plan
 - The value of the committed project funding and the conditional allocation from the funding source
- Reasons why the grants were not fully spent during the year of original allocation per the DoRA
- An indication of the time within which the funds are to be spent if the rollover is approved
- Proof that the MM and CFO are permanently appointed

No rollover requests will be considered for municipalities with vacant or acting CFOs and MMs for a period exceeding six months from the date of the vacancy. This also includes acting appointments as a result of suspensions of either the MM or CFO for more than 12 months.

Tabling and Consultation

Budget related policies

Section 1 of the MFMA defines a budget related policy as a municipality's policy affecting or affected by the annual budget of the municipality. It includes the tariff policy, the rates policy as well as the credit control and debt collection policies.

The MBRR lists the following budget related policies:

- The tariffs policy that the municipality must adopt in terms of section 74 of the MSA
- The rates policy which the municipality must adopt in terms of section 3 of the MPRA
- The credit control and debt control policy related to the collection policy that the management of losses municipality must adopt in terms of o A policy to promote section 96 of the MSA conservation and efficiency
- The cash management and
- Any policies relating to personnel investment policy that the including policies on overtime, municipality must adopt in terms of vacancies and temporary staff section 13(2) of the MFMA
- Any policies dealing with municipal borrowing policy must comply entities including:
- The SCM policy that the •
- Any other budget-related or municipality must adopt in terms of financial management policies section 111 of the MFMA
- Any policies dealing with the management and disposal of assets.



Court Cases

CASE LAW: BUDGETTIG MANAGEMENT IMPROVEMENT

1. ***SAPOA & others vs City Of Johannesburg Metropolitan Municipality & Others***

Matter handed down in 2018 (High Court)

Application of the adoption & promulgation of the 2018 by-aw on outdoor advertising to be set aside

Alternatively: certain sections to be declared unconstitutional & invalid

2. ***SAPOA vs City of Johannesburg in the Supreme Court of Appeal***

Council failed in determining the rates for the 2009/10 and amending their budget to comply with statutory obligations relating to consultation & public Participation

Council amended the budget after they belatedly become aware of the revenue shortfall
Parties in disagreement about the application of the legislation & extent an manner of the public participation

Valuation roll was In a chaotic state and objection was still underway , since some commercial properties significantly undervaluation

Council was the author of their own misfortune became the misfortune of the ratepayers

Councils failure to adopt a rate in terms of the applicable legislation does not mean the prior suggested rate becomes the lawful rate by default

Section 172 Constitution – conduct which is inconsistent with the constitution is invalid

Court Cases

CASE LAW: BUDGETTIG MANAGEMENT IMPROVEMENT

3. Constitutional Court outcome of *Rademan vs Moghaka Local Municipality* 2013 handed down by Judge Zondo
4. *Nelson Mandela Bay Municipality vs Amber Mountain Investment* 2016 Supreme Court of South Africa
Property rates levied for a financial year is an integral part of the budget process

CONSEQUENCE MANAGEMENT

Pietersen Vs the State High Court Western Cape Division 2017

Appeal on the conviction of a municipal Accounting Officer in respect of various statutory offences in terms of the MFMA

The 5 year imprisonment conviction.

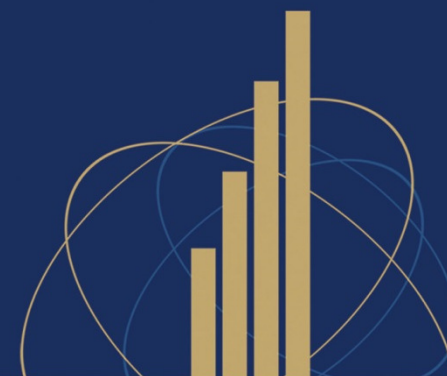
Appeal upheld on three charges / counts and convictions set aside

Appeal on two charges / counts is dismissed

5 years imprisonment set aside and replace with two years' imprisonment



Thank You!



CIGFARO

Chartered Institute of
Government Finance, Audit & Risk Officers

www.cigfaro.co.za

SAQA Recognised Professional Body