

# SO YOU THINK YOU WANT TO CORPORATISE?

## A Guide for Municipalities Considering Corporatised Water Entities

Palmer Development  
Group



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Report to the Water Research Commission by  
**Palmer Development Group**

WRC Report No TT 185/02

August 2002

Obtainable from:

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The publication of this report emanates from a project entitled:  
*The Option of Corporatisation for Establishing New Water Services Providers* (WRC Project No. 1141)

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ISBN 1 86845 880 6  
Printed in the Republic of South Africa

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# Introduction

This guideline is designed to assist municipal decision-makers through a multitude of considerations that need to be dealt with in order to create a municipal corporate entity.

While the guideline sets out a generic process for decisions on municipal service mechanisms it makes specific reference to water and the establishment of a corporatised water entity owned and controlled by a municipal council or councils.

A number of laws need to be taken into account when creating a corporatised entity of which the most important is the Local Government: Municipal Systems Act of 2000 which sets out a series of activities a municipality must carry out when restructuring or thinking about restructuring service delivery.

One of the major impacts of this new piece of legislation is that where previously a municipality could review and consider all aspects of corporatisation at once, it is now compelled to follow a sequential process and involve all stakeholders. While this may be more time-consuming, the benefit is that if the process is followed with an open mind other possibilities for achieving greater efficiency and improved service delivery may come to light.

This guideline is divided into a number of steps based on the requirements set out in chapter 8 of the Systems Act. At each step reference is made to other laws, policies or considerations that need to be taken into account.

# What is corporatisation?

In South Africa, inadequate investment in infrastructure has prevented millions of people from gaining access to basic services, such as water services. In terms of the new legislative framework for local government, developing service delivery capacity to meet the basic needs of communities is a central mandate for municipalities.

It has also been recognised that this is a difficult job given the constraints of a small rates base and limited national funding. The White Paper on Local Government makes a strong argument for “new approaches” to municipal service delivery to address infrastructure backlogs that still exist.

More efficient ways of working, which may include borrowing practices and approaches from business, are required in order to deliver basic services more effectively.

Corporatisation is one option available to municipalities seeking to improve their capacity to deliver water and sanitation services.

Generally, it involves a process of changing existing public-sector service providers into separate legal entities or companies, owned (completely or partially) by local government. This owner may be a single council or two or more neighbouring municipalities.

The new company is staffed by public-sector employees, but its assets, finances and operations are separated out from the rest of the municipal organisation or “ring fenced”. This allows the company to trade along commercial or business lines while remaining under the control of the political and administrative structures of the council. In essence, it implies a degree of managerial independence within a framework of public ownership and control, with the company ultimately remaining accountable to the electorate.

Corporatisation is just one water service delivery organisational option amongst many. The Dutch organisation IHE-Delft, a UNESCO Institute for Water Education, defines a range of modes of water sector organisation in the diagram alongside.

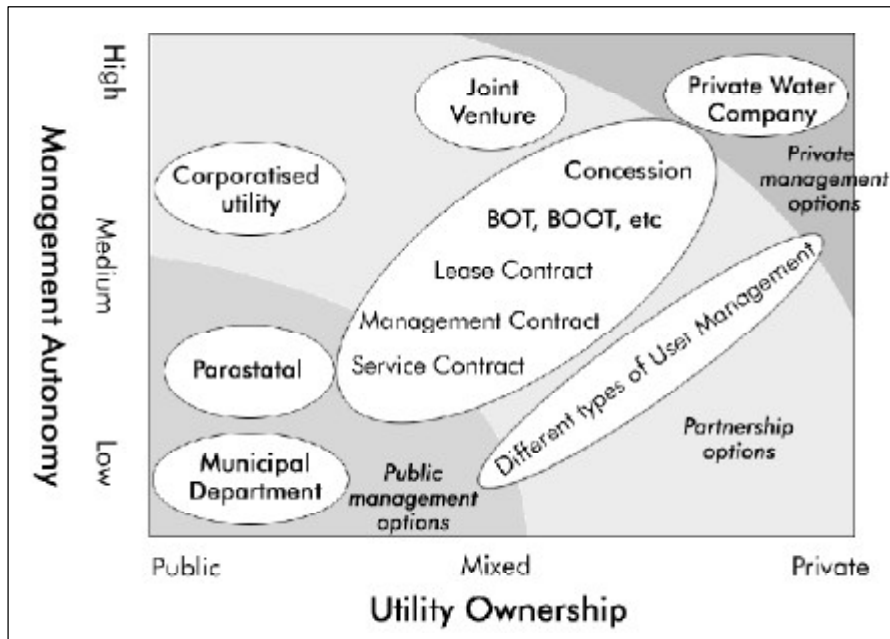
## How does it compare to other options?

The diagram shows that water services can be delivered by organisations which differ in terms of:

- **Utility ownership:** Which can range from public ownership to private ownership, or be a mix of the two; and
- **Management autonomy:** Which can range from low to high. Generally speaking there are lower levels of management autonomy in public organisations than in private organisations.

Some of the organisational options that IHE identify include:

- Municipal Departments: Which is the normal way in which water services are delivered in South Africa;
- Parastatals: such as Water Boards;



- Different types of user management: such as village water committees and CBOs;
- Service contracts: such as the use of a private company to undertake meter reading services;
- Management contracts: where a municipality contracts with another party to manage the water service. Local examples include the case where Rand Water is managing water services for Harrismith, and the case of Johannesburg Water which has contracted with a consortium of private local and international companies to help manage water services;
- Lease contract: where a municipality leases its assets to another party to use and manage the assets at their risk;
- Build-Operate-Transfer (BOT) contracts: Where a municipality contracts with another party to build specific assets, operate these assets, and transfer them to the municipality at the end of the contract. A local example is the case where Durban contracted with a company to build a water recycling plant;
- Concessions: Where a municipality contracts with another party to take over the municipality's assets, construct new assets, operate these assets, and return the assets at the end of the contract. Local examples include the Dolphin Coast and Nelspruit Municipalities.

There is no one best way to deliver water services. Each case required careful consideration of the local circumstances before a decision is taken.

For the purpose of this guideline we regard the corporatisation of municipal water services as entailing:

The creation of a separate, legal, 'corporatised' entity, owned and governed by one or more municipalities, with the explicit objective of providing water services to some or all of the municipality's water users. The corporatised entity may enter into a range of contracts with private or public partners to facilitate service delivery.

## What corporatisation is not

- Corporatisation is not privatisation. Municipalities are required by the Constitution to provide basic services to members of the community. The law does not allow municipalities to divest themselves of this core responsibility.
- In addition the law does not make provision for municipalities to sell assets (or privatise) any infrastructure that is required for the provision of basic services.

### The Pros and Cons of Corporatised Water Service Utilities

The advantages and disadvantages of corporatisation will depend, in part, on who you are. A Councillor is likely to see things from a different perspective than a manager, a worker, or even a consumer. Nonetheless, experts generally agree that corporatisation brings the following general benefits:

#### The pros

- Corporatised utilities should be more transparent than municipal departments, making the costs of service delivery easier to establish;
- Assets remain under the control of the Council;
- Corporatisation is a flexible option, which can also implement a wide range of partnership options with other public or private parties;
- Water utilities corporatised under company law tend to be more insulated from unwarranted political interference, since utility managers generally have substantially more autonomy than their colleagues in municipal departments;
- The cost recovery and operational performance of corporatised water service utilities is generally significantly better than that of their public counterparts. For example, Dutch public water companies perform on a par with private utilities in the United Kingdom and France in terms of water prices, labour productivity and leakage control. Likewise, the corporatised water service utilities in the Philippines perform better than private Asian water utilities on various counts;
- The fact that municipalities generally have no interest in profit maximisation — although they should insist on full cost recovery — reduces the monopoly exploitation problems that arise with privately owned utilities.

#### The cons

- The process of corporatisation can be costly and time consuming;
- A decision to corporatise could have a negative impact on labour relations;
- Municipalities may not have the capacity to properly govern corporatised water utilities;
- High levels of managerial autonomy can lead to over-engineering or gold-plating, especially where staff are strongly engineering-oriented;
- If the composition of the board of the corporatised utility does not include suitable expertise then it may have limited ability to contribute to decision-making;
- Utility managers can be captured by political interests, leading to unsound, inequitable or short-term decision-making; and
- Depending on the manner in which they are established, corporatised water service utilities may have less access to investment capital than their parent municipalities.

# Corporatisation in SA today

New thinking about approaches to municipal service delivery has coincided with the end of the local government transition and the recognition of the importance of developmental local government.

The exploration of a range of alternate service delivery options, including corporatisation is thus relatively new in South Africa. One exception is the East Rand Water Care Company (ERWAT) which adopted some of the features of a corporate entity several years ago when a number of small municipalities came together to form a single water service in order to benefit from economies of scale.

In Johannesburg the creation of Johannesburg Water is an example of corporatisation combined with outsourcing. Cape Town and Durban are also exploring alternate service delivery options, including the creation of water corporations.

## THE ERWAT CASE

The East Rand Water Care Company was formed in 1993 when it became legally possible for water purification and conveyance to take place on a regional basis. One of the motivations for the proclamation which made the establishment of ERWAT possible was the difficulty small and poorly resourced municipalities had in providing water purification. The establishment of a single service provider allowed for greater economies of scale, however, and more efficiency.

ERWAT was established as a section 21 company owned by the East Rand regional services council and all the local authorities of the East Rand area. It can be viewed as an early prototype of a corporate entity from which lessons can be learned.

It is overseen by a board of directors comprised of councillors from the councils it serves.

ERWAT was formed to carry out water purification for a 30 year period after which the agreement will con-

tinue indefinitely until terminated by mutual consent or with written notice by either party.

The details of the agreement between ERWAT and the councils which it services gives an indication of the detail which must go into the contractual relationship between several municipal councils and a corporatised entity.

The contract covers a range of eventualities and sets out the respective responsibilities of ERWAT and the councils with regard to:

- The construction of connections to ERWAT's regional sewers;
- Payment for this work;
- Cleansing and examination programmes for each council's sewer reticulation system;
- Responsibility for ensuring that sand, silt, solid articles or obstructions do not enter ERWAT's regional sewers and water care works; and
- Steps necessary to prevent stormwater from entering the regional sewer.

Payment for ERWAT's services is determined annually based on the volume and load of wastewater treated by ERWAT over the previous year. ERWAT reserves the right to amend these charges if this reflects a change in the real costs incurred in the conveyance and treatment of wastewater and is in line with normal business practice. ERWAT gives 120 days notice of any proposed amendment to charges to enable the local authorities to make any necessary change to their tariffs.

If ERWAT and the local authorities are unable to reach agreement on a dispute this is submitted to arbitration, and a number of scenarios are set out within which to resolve the disagreement.

A number of merits of the ERWAT arrangement have been identified. These include:

- A cheaper service than the municipalities could offer individually, as a result of economies of scale;
- Private sector skills and expertise have been drawn on, although not exclusively since top management came

from local government;

- Opportunities exist for employees to learn new skills; and
- Opportunities to raise capital and form subsidiary companies which bypass council bureaucracy.

It should be noted however that changes to the legislative environment, in the form of the Municipal Financial Management Bill may impact on the independence of corporatised entities to borrow money without the go-ahead of the councils that own them.

## JOHANNESBURG

The only contemporary example of corporatisation in the water sector is the creation in 2000 by the Greater Johannesburg Metropolitan Council of Johannesburg Water. The establishment of this publicly owned company was preceded by a dramatic financial and administrative crisis that forced Johannesburg into a rapid and wide ranging process of municipal restructuring.

One of the new structures to emerge from this was a water and sanitation utility to service Greater Johannesburg's 2.8 million people.

This is one of 11 Municipal Business Enterprises that operate on commercial principles, with the Council as sole-shareholder.

The utility is governed by a board of directors, with a maximum of nine members. As the City owns all the shares it appoints all the members, one of whom is a councillor.

The Council is responsible for all regulatory functions including the setting of tariffs, but all other operations are the responsibility of the utility and are set out in a service delivery agreement.

The establishment of Johannesburg Water meant overcoming several obstacles. These in-



cluded creating a new legal entity in the absence of a law to facilitate the creation of corporatised entities. Myriad legal concerns had to be taken into account and the new entity had to comply with the Companies Act, The Labour Relations Act and the Promotion of Local Government Affairs Act. These are but a few of the laws that must be taken into account when restructuring service delivery.

In addition labour was strongly opposed to the restructuring that was taking place in the municipality as a whole, and this added a number of communication challenges to an already complex process.

At the same time as establishing the new company, Johannesburg together with other big cities, was pre-

paring to become a unicity, a process with its own challenges including the amalgamation of four local councils and a metropolitan council.

### **CAPE TOWN AND DURBAN**

Both the Cape Town and Durban municipalities have begun to explore the possibility of corporatising aspects of the water service in their metropolitan areas.

In Cape Town a report prepared by consultants from Price Waterhouse Coopers recommended that bulk water and wastewater treatment facilities be corporatised in order to provide more focused management, incorporate private sector skills and expertise, facilitate investment and remove this non-core function from the

municipality.

In Durban extensive investigations into corporatisation and other restructuring options have been explored. The Durban Unicity Committee has suggested that decisions on the most appropriate institutional form for service delivery should be guided by cost-effectiveness, quality, financial sustainability, the involvement of civil society and meeting social goals.

The case of Johannesburg and the initial exploration of corporatisation by Durban and Cape Town illustrate the extent to which things particular to the South African context will play a defining role in the establishment of new corporate entities.

### The legal context

One of the key challenges for municipalities that wish to review existing service delivery mechanisms is negotiating the complex myriad of laws — both new and old which local government must abide by.

Municipalities that wish to corporatise their water services are treading new ground. Not only are there limited precedents, but the legal framework has shifted considerably in the last five years as local government reaches the end of a lengthy transition.

In addition some of the laws that impact on corporatisation overlap, while a potential conflict between some laws also exists. When it comes to the establishment of a new entity to deliver water services, municipalities will have to study the laws which govern local government and are largely administered by the Department of Provincial and Local Government as well as the laws administered by the Department of Water Affairs and Forestry. Since municipalities employ large numbers of staff labour legislation enforced by the national Department of Labour is also very important.

The drafting of a new law specifically designed to assist municipalities implement alternate service delivery options has been mooted, but has not yet been drafted.

The key government policy papers and laws impacting on corporatisation are set out in this document.

# The decision-making process

Given the complexity of a decision-making process that involves assessing municipal services and possibly deciding on a new arrangement for municipalities — after consultation with a range of stakeholders — the design of the decision-making process will be vital.

In creating a roadmap to guide municipal decision-makers this publication draws on a number of respected decision-making models.

### Selecting a team to drive decision-making

Given the complexities of the decision-making process that is to be embarked upon, it is recommended that a team be selected early on to drive the process on a daily basis. This should be a representative group of committed councillors and officials known for their integrity. While the team may consult with interested stakeholders and representatives it must be able to view the process from a broad, social perspective focusing above all on the interests of water and sanitation consumers.

They will find the months ahead challenging in the extreme and as far as possible should be relieved of other responsibilities in order to concentrate on this important task.

Members of the team should include a **team leader** whose primary responsibility will be keeping the process moving, ensuring that the necessary resources are available and taking the decision-making process toward closure.

A **stakeholder co-ordinator** should be appointed to concentrate on and manage the various interest groups that will want to participate in the decision-making process and be kept informed of developments. This person should also take responsibility for stakeholder communication and education.

Since the creation of corporate entities is still fairly new in South Africa, and the legislation calls for maximum transparency, it is recommended that a **spokesperson** is also appointed to keep the media abreast of developments.

One of the factors that might be considered when putting together a team is the representation of councillors from opposition parties. Would this add to the credibility of the final decision, or is this likely to make the process more difficult to complete timeously?

In designing the team, decisions should be taken up front about the legal and organisational status of the team: how it will be staffed; where it will obtain the resources necessary to carry out its investigations and who will it be accountable to (for example, the Mayor, the Municipal Manager and/or the Executive Committee).

In establishing the team the Council should ensure that it has sufficient managerial and financial autonomy to carry out its tasks, that it is not subject to political interference, and that major policy issues are dealt with as they arise by putting in place reporting and accountability mechanisms.

### Developing a timetable

Developing a realistic timetable to complete a decision-making process around corporatisation and implement it will help move the process along and prevent logjams.

Without a long-term schedule the process risks being side tracked by particular issues and crises while losing sight of the long-term objectives.

In setting a timetable for the process you need to take into account the urgency of improvement and the nature of the factors driving the decision-making process. If one of your drivers is overcoming a dangerous financial crisis, speed in decision-making will be of the essence. If the driver is to reduce costs and extend services, the time framework may be more flexible.

When compiling your timetable bear in mind the need to maintain momentum, as well as setting aside enough time to thoroughly meet the requirements of the Municipal Systems Act, to avoid future legal challenge.

## Designing a decision-making process

When it comes to a decision about whether or not to corporatise the water services in your municipality, it's reassuring to know that there is a lot of material available on the actual decision-making process. Toolkits developed in other countries and by international institutions outline every step in the process in great detail. While not all the factors will be relevant to your circumstances, it is worthwhile going through each of the steps to ensure that you have covered all the bases.

In addition, municipal managers, councillors, legal and technical managers should also be aware of the South African context, which includes both the relevant legislation and the experience of other municipalities.

Experiences in other countries show that how the decision is made and implemented can determine whether or not the measure succeeds.

Questions that need to be asked even before a decision is contemplated include what factors need to be considered, who should be involved in the process, and how long and costly it should be.

The process should strive to be fair and transparent, so that the risk of legal, political, labour or consumer challenge later on is minimised. South Africa's local government legislation also places a lot of emphasis on deepening local democracy through pub-

lic participation and consultation with the public.

In the end, the people who are taking the decision need to be guided by their mandate to develop the capacity to deliver basic services in a cost-effective, sustainable way to the benefit of those they represent and serve.

Achieving equity in the provision of water is a primary concern for councils, which will continue to bear ultimate responsibility for this basic service. While the primary outcome of corporatisation is greater efficiency, the savings and income generated by a successful corporatisation project can be used to promote equity through subsidies for poor households and/or greater investment in extending and upgrading infrastructure.

### What is a good process?

- A satisfactory outcome for consumers without unnecessary costs and delays
- Flexibility to cope with unforeseen factors or events
- Strong political support and will to implement
- Co-operation between management and labour
- Broad support within the municipality
- Informed and involved stakeholders
- Supportive public and civil society



**Municipal manager**

How can we be sure that we take into account everything we need to?



**Councillor**

Is this a process that we can go through ourselves or do we have to consult with and involve external stakeholders and communicate to the public?



**Shopsteward**

Would it be better for us to be part of decision-making or wait until we see what is planned, before we get into the debate?



**Consumer**

What is the Council up to? I wonder if they are planning to inform us at any stage, or will we be kept in the dark?

**Diagram 1: Municipal Systems Act  
Process for Decisions on Service Delivery Mechanisms**

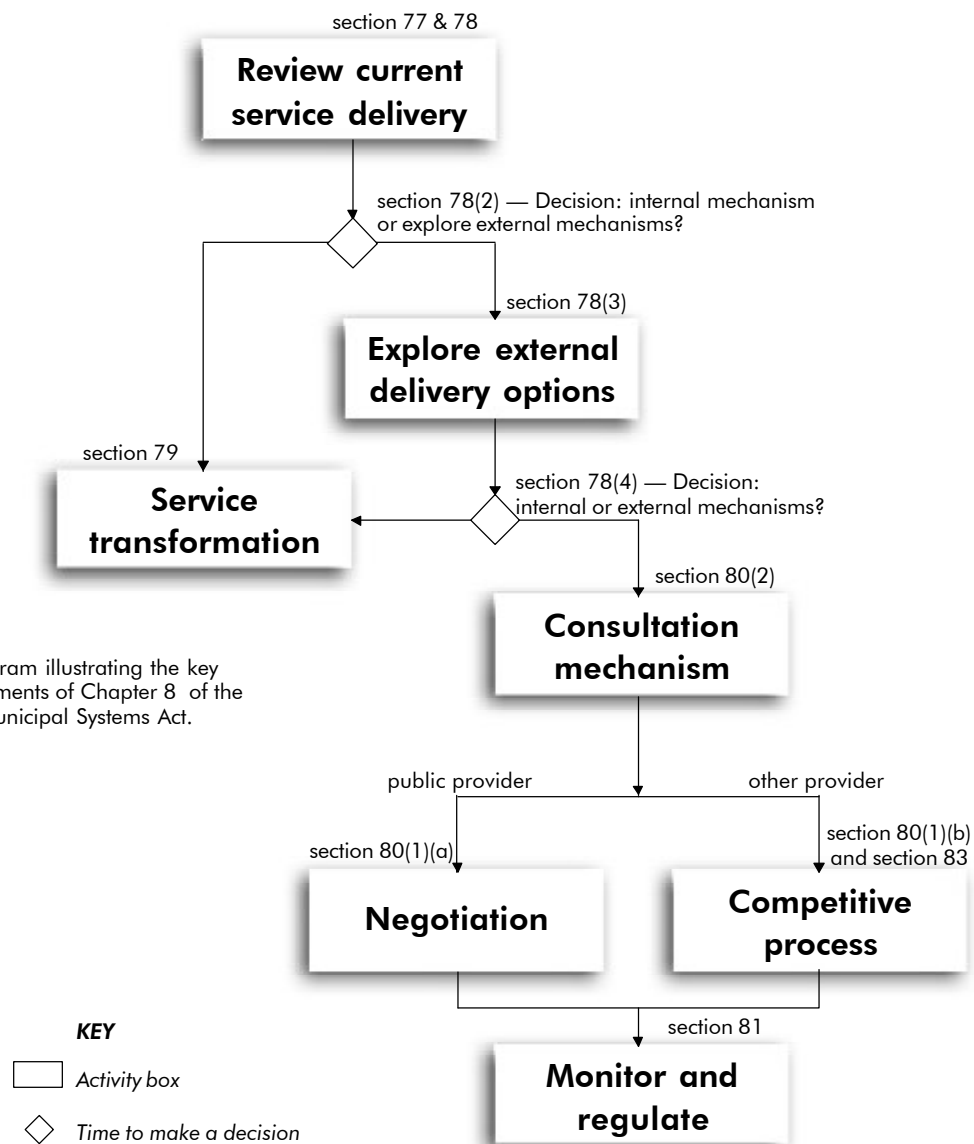


Diagram illustrating the key requirements of Chapter 8 of the Municipal Systems Act.

## Local Government: Municipal Systems Act (2000)

This new law is of critical importance to the issue of corporatisation. It provides a comprehensive legal framework for decision-making around the corporatisation of water services, the implementation of such decisions, and the ongoing responsibilities of municipalities who own and control corporatised entities. Familiarity with this law is vital for any municipality considering creating a corporatised water service provider.

Key sections of the Act include sections 77 to 82 and section 94. These sections can be interpreted as a range of steps the municipality needs to go through when establishing a new service delivery mechanism.

# STEP ONE

## Review current service delivery

The first step in the decision-making process, to create a corporatised water entity, is to review service delivery as it currently stands.

Section 77 of the Municipal Systems Act lists a set of circumstances in which municipalities must review their provision of a municipal service in order to choose an appropriate mechanism to provide the service.

The legislation implies that reviews like these should take place on a regular basis in the following circumstances:

- When preparing or reviewing the integrated development plan;
- When a new municipal service is to be provided;
- When an existing municipal service needs to be significantly upgraded, extended or improved;
- When a performance evaluation requires a review of the delivery mechanism;
- When a municipality is restructured or reorganised in terms of the Municipal Structures Act;
- When requested by the local community through public processes and procedures; or
- When instructed to do so by the provincial executive, acting in terms of the Constitution.

### Assessment criteria

In order to review their provision of a municipal service the Act sets out a number of criteria that must be assessed. These include:

- Direct and indirect costs and benefits like the effect on the environment, human health and safety;
- The municipality's capacity to ensure the skills and expertise necessary;
- If re-organising the municipal administration would enable the municipality to provide the service;
- The impact on development, employment and job creation;
- The views of organised labour; and

- Current trends in the provision of municipal services.

### Scope of service assessment

When carrying out the review of service delivery it is important to decide which components — such as purification, distribution, sewerage or treatment, are being reviewed.

### Scope of geographic assessment

The geographical area affected also needs to be decided. For instance is an entire municipal area being considered:

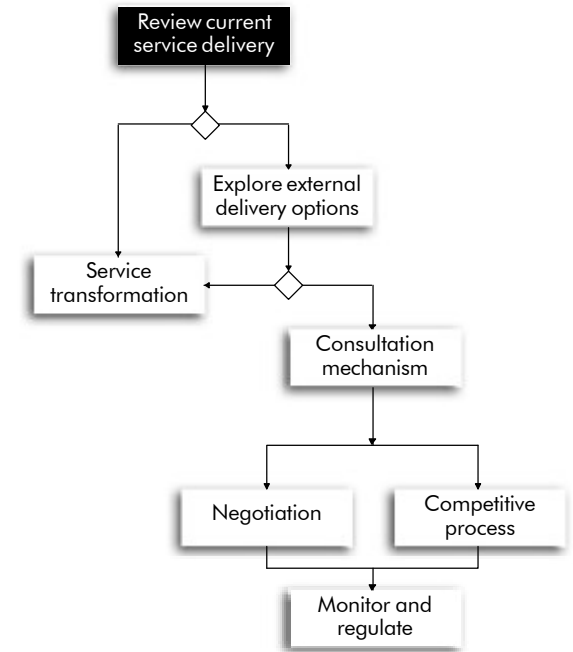
- part of an area;
- or are more than one municipality investigating a joint service delivery mechanism?

The outcome of this decision will shape the process. If more than one municipality is involved particular legal considerations must be taken into account

### Identify drivers

By assessing this list of criteria municipal decision-makers can develop a better understanding of the “drivers” that will underpin their decision making process. These are the factors that drive local government to evaluate their service delivery capacity and possibly look at alternate service delivery mechanisms.

It is important when initiating this process that policy-makers, be they councillors or municipal officials, agree on what the drivers or driving factors are. It is also important that, as far as possible, key stakeholders share in this agreement. While the Municipal Systems Act stipulates that the views of labour must be taken into account at this stage it will also be important to begin to identify other key stakeholders whose involvement from early on in the process will contribute to an effective decision-making process.



## Johannesburg's financial crisis

Near bankruptcy forced Johannesburg into rapid action to enable it to continue delivering services and running the city.

In 1995 when the new councillors took office for the first time in Johannesburg they inherited huge backlogs, crumbling infrastructure, inadequate financial services and a robust culture of non-payment.

The severity of the problems in the country's biggest city only became truly apparent in 1996 and 1997. As the staff complement swelled and ambitious capital expenditure began, the council found itself unable to raise loans and began relying on the operating budget as the only source of ready cash.

The city's deficit began to climb until bankruptcy loomed in 1997.

This convinced municipal decision-makers that it was no longer business as usual and that massive institutional change was a necessity, not a luxury.

An audit of the organisation revealed that the structures of the organisation were in a very bad state. When it came to water provision there were five water departments each with their own head.

They were not responsible for their own financial management, human resources, IT or corporate services, focusing instead only on technical management.

This expensive way of running the water service laid the basis for the whole-scale restructuring which culminated in the launch of Johannesburg Water.

Some of the drivers encouraging investigation into new service delivery mechanisms are:

- **Infrastructure backlogs and funding limitations:** The installation, maintenance and upgrading of water systems infrastructure is exceedingly costly.

While cities and towns the world over are forced to look at creative ways in which to fund this, South Africa, like other developing countries is faced not only with the need to carry out expensive maintenance, but has yet to overcome the massive backlog in infrastructure provision inherited from the apartheid era. As national government is unable and unlikely to allocate more money to local government from the equitable share of revenue allocated to all spheres of government, local government will have to come up with its own solutions to the funding problem.

- **The need to reduce costs:** The need to reduce costs to consumers or free up financial resources for use in other parts of the organisation.

- **Financial crises:** Municipalities that face bankruptcy may also be forced to look at new ways of rendering services in order to save money and tackle backlogs. This was one of the key factors driving the decision by the Greater Johannesburg Metropolitan Council to create Johannesburg Water, a corporatised water company.

Drivers may stimulate proactive or reactive responses. Reactive drivers, such as Johannesburg's financial crisis, will tend to focus the process on addressing a key problem such as cost. Proactive drivers may involve a balance of cost and non-cost factors, driven primarily by value to the customer or consumer.

## General duties of a municipality

The Constitution and the Systems Act set out the responsibilities of a municipality when it comes to providing residents and citizens with municipal services.

In giving effect to the Constitution municipalities must:

- Prioritise meeting the basic needs of the community;
- Promote development; and
- Ensure that all members of the local community have access to a minimum level of basic municipal services.

## SUMMARY TASKS FOR STEP ONE

- Appoint a team to manage the decision-making process;
- Develop a timetable;
- Identify stakeholders for ongoing engagement;
- Decide on scope of assessment; and
- Review service delivery against criteria set out in the Municipal Systems Act.

# STEP TWO

## Decision: internal mechanism or explore external mechanism?

Once a municipality has assessed the criteria set out in step one, it may decide to continue providing the service internally. Otherwise the municipality may postpone deciding how the service will be provided while it explores the possibility of providing the service through an external mechanism.

### The Systems Act defines an internal mechanism as:

- A department or unit within a municipal administration;
- A business unit operating within the administration; or
- Any other part of the administration.

### An external mechanism is defined as:

- A municipal entity (including a corporatised entity);
- Another municipality;
- An organ of state including a water committee, a

licensed service provider and a traditional authority;

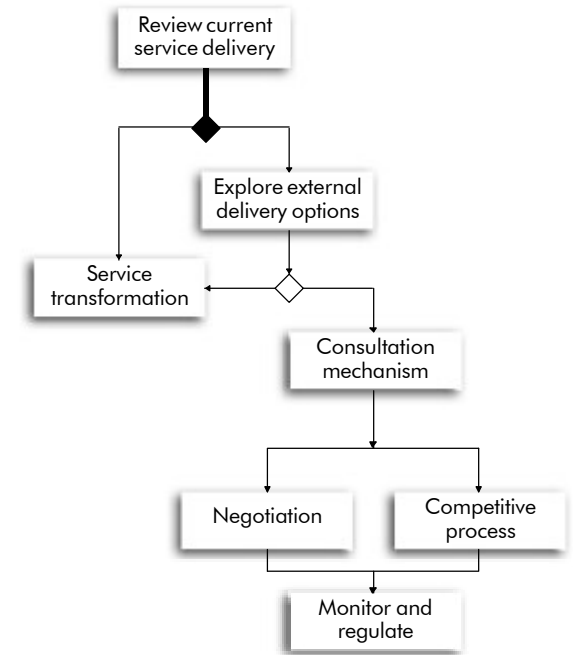
- A community based organisation (CBO) or a non-governmental organisation (NGO); and
- Any other body competent to operate a business activity.

Once the municipality makes a decision to continue to provide the service internally or explore external options, it is important that it explains this decision.

If the municipality agrees to continue providing the service internally, it must be able to show that this is a sustainable choice.

As the Council may have to defend its decision to stakeholders and the media, and possibly even the courts, it should provide clear reasons.

As the decision is also a formal one taken in terms of the law, a Council or Executive Committee resolution should be passed in support of it. The resolution should be carefully worded to keep options open.



### SUMMARY TASKS FOR STEP TWO

- Choose whether to continue providing the service internally or to explore external options;
- Record and communicate the decision.

Does this mean that government can give away its whole responsibility for giving me water? What happens if something goes wrong?



**Consumer**

No! Government can never give away its responsibility for water services and sanitation. We have the full responsibility for setting standards and seeing that the taxes you pay supply your basic needs.



**Councillor**

Hmm. I don't trust them



**Shopsteward**

And if something goes wrong I'm sure it's my responsibility!



**Municipal manager**

### **The white papers on local government and municipal service partnerships**

The white paper on local government, which laid the basis for the subsequent Municipal Structures and Municipal Systems Acts, makes a strong argument for new approaches to municipal service delivery in order to address the considerable infrastructural backlogs that presently exist.

This is explored in more detail in the white paper on municipal service partnerships (MSPs) which sets

out a range of possible MSPs. Corporatisation is not included in these, but could be a step toward the implementation of a municipal service partnership.

The white paper notes that MSPs should enjoy equal status among a range of possible service delivery options open to local councils and points out a number of potential legal obstacles.



## Water as a municipal service

A well-run and managed water service is vital for development. Water is essential to life and municipalities are charged with ensuring access for all, and that provision is made for the poor.

Broad access to water and sanitation has important public health and sanitation benefits which contribute to the well-being of the community as a whole, while water and sanitation infrastructure are critical to economic development and attracting investment.

Although water services are most logically provided at a local level, water resources are interconnected and what one user does can affect another. The overall governance structure for allocating water thus impacts on local water service providers who cannot function in isolation from one another.

The provision of clean water involves a number of different processes that can be divided into four service components.

These are: (see diagram alongside)

- Bulk water supply;
- Water distribution;
- Wastewater reticulation; and
- Wastewater treatment.

### Physical aspects

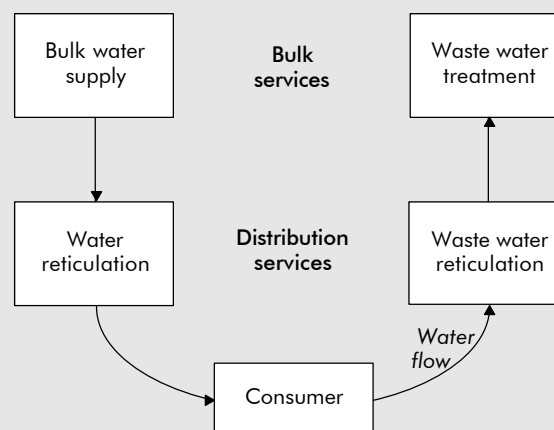
The bulk water supply component involves the collection of water in dams, transporting this water to a treatment works where it is treated for drinking, and finally pumping the water into bulk supply pipelines ready for domestic use.

Water distribution involves the distribution of water to thousands of users through a complex network of pipelines from distribution reservoirs and water towers.

Once water has been consumed by households and industry the wastewater and sewage generated must be treated. In a reverse process thousands of pipes collect and carry (or reticulate) wastewater to a treatment works.

Treating wastewater takes place at specialised treatment works that dispose of any remaining waste. This is an important process as the disposal of untreated wastewater and sewage can have serious health consequences.

### Major water service components



### Support aspects

In addition to the four service components a number of other supporting activities are required to ensure that municipalities are able to supply their users with clean water.

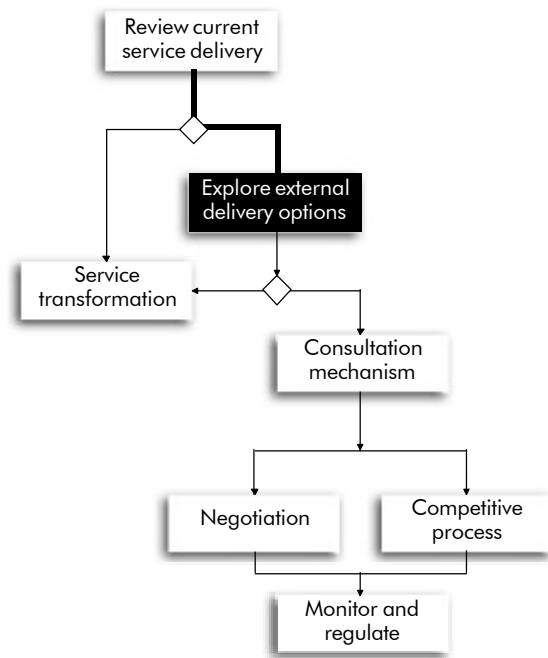
These include governance arrangements, corporate services, strategic planning services, technical services,

financial services, human resources services, information technology services, customer relations services, billing and treasury services.

Any institutional change to a municipal water service — such as corporatisation — requires a clear decision about which aspects will be affected. If a decision is taken to create a corporate entity from municipal water services, only some components may be included. Others may remain the responsibility of the municipality, or they may be provided by a partner in the private sector.

### Facts about Water Services

- The Constitution says that municipalities are responsible for the delivery of water services, which are naturally well suited to local management;
- Water has historically been the responsibility of government, but there have been some public-private arrangements for its provision;
- Local government has been owner, operator and regulator of water services;
- Private sector involvement has been very limited to aspects like meter reading;
- Water provision is naturally highly monopolised;
- Expensive and complex infrastructure does not allow for competition between different water supply services;
- Many water and sanitation system assets are buried underground and obtaining accurate information about them is costly.



# STEP THREE

## Explore external service delivery options

Once the municipality decides to look at providing a service through an external mechanism, such as a water corporation, the municipality must inform the community that it intends exploring different service delivery options.

After the community has been informed of this intention, the Municipal Systems Act requires that each service delivery option must be assessed in terms of:

- Direct and indirect costs and benefits, like the effect on the environment, human health and safety;
- The prospective service provider's capacity to furnish the necessary skills, expertise and resources;
- The views of the local community;
- The impact on development and employment patterns; and
- The views of organised labour.

Once it has assessed each of these the municipality must also take into account any applicable legislation relating to the appointment of a service provider, other than a municipality, and any other requirements that may be set out in regulations.

Experiences in other countries that have undertaken such reviews, point to this being a crucial stage in the decision-making process, as the measures for evaluating alternate service approaches must be defined. This is a difficult area for municipalities as it will require a great deal of self-evaluation as well as stakeholder involvement and participation.

The American Water Works Association's decision-

making approach recommends that an effective way of laying the basis for an assessment of different service delivery options should include:

- Revisiting and confirming "core organisational values". The values determine what is important to the utility and its stakeholders and form the basis of a further evaluation.  
Values can be defined as the principles that communicate what is most important to a municipality and its stakeholders with regard to its water service. Some of the values may be more important to some stakeholders than others. Values identified could include: efficient service delivery, good customer relations, value for money and good labour relations.
- Identifying what factors outside your control are impacting on the municipality's ability to provide a competitive service.

In addition the service provider chosen, whether internal or external, needs to meet the requirements of section 73(2) of the Systems Act which maintains that municipal services must be:

- Equitable and accessible;
- Provided through an efficient use of resources with standards of quality improving over time;
- Financially sustainable;
- Environmentally sustainable; and
- Regularly reviewed with a view to upgrading, extension and improvement.

### SUMMARY TASKS FOR STEP THREE

- Apply criteria to external options;
- Consult with and inform labour and the community

### Informing the community

While the Municipal Systems Act requires the municipality to inform the community that it intends exploring external service delivery options it does not prescribe how the community should be informed.

Possible ways of informing the community (a process that differs from consulting the community) could be through:

- A council resolution
- A press statement
- A press conference
- Articles in local newspapers
- Advertisements in local newspapers
- Radio interviews
- A public meeting

The information message should be multilingual in order to reach many residents.



**Councillor**

If corporatisation will help us bring water services to more people sooner rather than later, then it sounds attractive. Does this mean quicker decision making and less bureaucracy?



**Municipal manager**

Will this make my job of running this municipality simpler or is this the start of whole new set of problems?



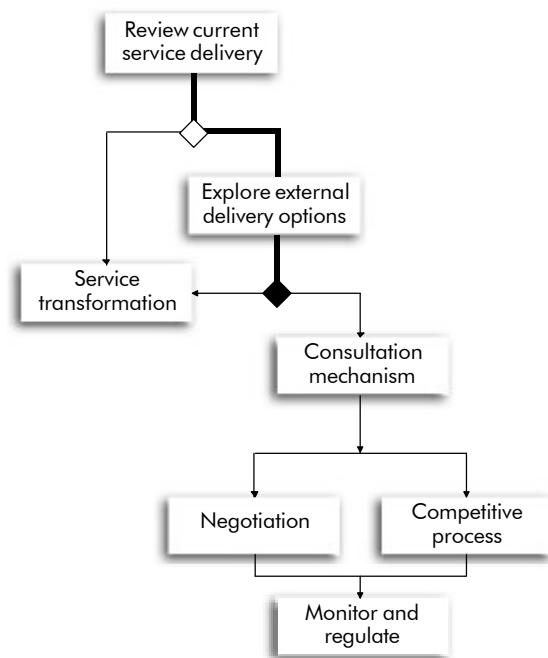
**Shopsteward**

Can we trust the managers and politicians? Isn't corporatisation the first step to privatising the council's assets and operations, which means fewer benefits and job losses for our members.



**Consumer**

Does this mean a more efficient water service or could it lead to higher bills?



# STEP FOUR

## Decision: internal mechanism or external mechanisms?

Now the municipality has carefully reviewed a range of external options for providing its water service. The council must make another important decision about which direction to proceed in.

Having looked at the external options, the municipality must finally decide whether to revert to an internal service provision option or to go the external route.

Once again the Council should reach a clear decision which it can defend to stakeholders and the media.

It will be important to publicise this decision, in order to meet the requirements of the Systems Act, and to keep the general public informed of policy developments.

It may take a great deal of a municipality's energy to conduct a major evaluation to create a corporate entity.

It is important however, that the complexity of the process does not hinder making a decision. It is vital that the process is brought to closure in a decisive way. In order to do this the decision-making team should:

- **Develop a recommendation.** This should involve adhering to principles agreed with stakeholders and sticking with the results of the evaluations that have taken place. Since the decision will have to be de-

fended to stakeholders it is important that the decision is taken in keeping with a decision-making process which stakeholders have bought into.

- **Get the endorsement of key decision-makers (EXCO and Council);** If the key decision-makers have been involved appropriately throughout the process this should not be a major challenge. A quality presentation for decision-makers should summarise the decision-making process, stakeholder involvement, the range of alternatives considered, the evaluation process used, estimated resources and timeframe for implementation and a summary of expected benefits. One-on-one meetings, and being available to address party caucuses can be very effective ahead of the group meeting seeking endorsement.
- **Communicate the decision to stakeholders:** A good process will help ensure the support of stakeholders. Particular attention should be paid to stakeholder groups likely to affect the implementation of the new arrangement and pay particular attention to any remaining concerns they express. These can be addressed in the implementation and monitoring stages.

### SUMMARY TASKS FOR STEP FOUR

- Reach a decision on a specific internal or external service mechanism;
- Record and communicate the decision;
- Refine the timetable and resources to implement the decision.

# STEP FIVE

## Consult and share information

Consultation with the community is one of the key requirements of the legislation. Section 80(2) of the Systems Act requires the municipality to consult with residents and when entering into a service delivery agreement with a service provider.

In order to ensure that this is a meaningful process, which is able to withstand criticism and intense public scrutiny, detailed attention should be paid to getting it right.

Particular attention should also be paid to meeting the requirements of South Africa's labour legislation when it comes to consultation with labour.

### Consulting with stakeholders

In the new South African democratic dispensation, consulting with stakeholders — especially communities and individuals who will be directly affected in any way by policy shifts or decision making — is required by law.

The Municipal Systems Act, requires specific consultation by councils even considering exploring alternative service delivery mechanisms. It is important for the process that this consultation process is adhered to at each given stage, otherwise any decisions taken could be challenged in court.

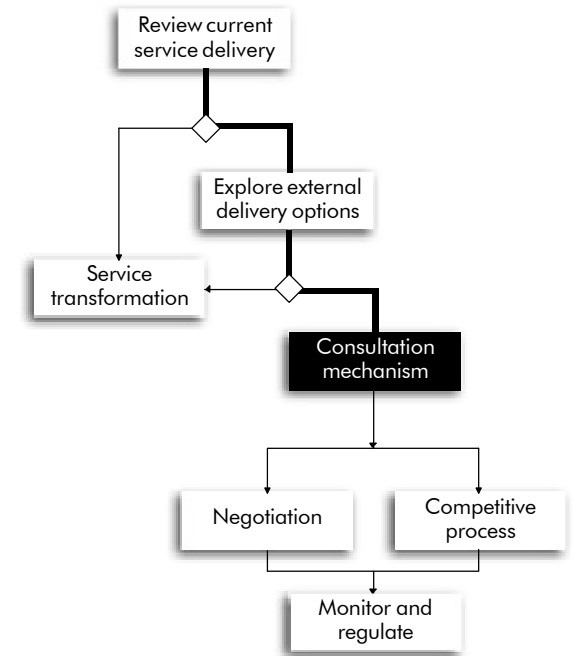
International experience also stresses the need to involve stakeholders throughout the process. Getting buy-in from crucial quarters — such as the unions whose members may be affected, and by businesses and householders who are users of the service — is critical to the successful implementation of corporatisation or any other municipal service partnership.

Municipalities must devise a process for identifying stakeholders who may be in a position to influence the outcome of your evaluation and decision-making process, understand what their perceptions and priorities are and involve them in an appropriate way.

Successful stakeholder participation involves the

following steps:

- Describing the decision-making process  
It is only once you clearly map out your route through the process that you will be able to decide when and how to inform stakeholders of what is happening or what is being considered.
- Identifying and understanding affected stakeholder groups  
A list should be drawn up with all the affected parties and individuals or groups and their priorities and perceptions identified. For instance, unions and employees may view the process with suspicion, while consumers may perceive the outcome of an option like corporatisation to bring better service or higher bills.
- Determining the vulnerability of your process to external pressure  
Decide which of your stakeholders has the greatest capacity to influence the outcome of your decision. For instance, co-operation between labour and management is essential and labour should be involved as early as possible.
- Defining boundaries for stakeholder involvement  
Decide at what point in your process you should involve which stakeholders. For instance, some stakeholders need to be taken along throughout the process, while others are involved at specific stages.
- Selecting communication and involvement techniques  
Determine how and what will be communicated and at what stage groups or individuals will be consulted or informed.



### SUMMARY TASKS FOR STEP FIVE

- Identify stakeholder groups
- Determine vulnerability to external pressure
- Define stakeholder involvement
- Select communication techniques
- Develop a communication plan

- Developing a communication and involvement plan  
This is the communication strategy and actual means of communicating or conducting sector or public participation. It ranges from taking a council resolution and sending letters, to placing advertisements and issuing press releases to holding briefings for select groups and public hearings.

In South Africa, the scope and timing of participation is laid down in the Municipal Systems Act. This is the minimum requirement and Councils may wish to conduct a wider or more extensive information and consultation programme. This would help secure more buy-in for any corporatisation of municipal services and is in keeping with the principles underlying the Constitution and the legislative framework for local government.

#### **What the Systems Act says about the views of labour and the community**

Section 77 of the Act describes the circumstances in which a municipality must review and decide on mechanisms to provide municipal services. Then section 78 outlines a number of factors it must assess during this process. One of these — section 78 (1) (a) (v) — is the views of organised labour.

How this is done is not described and it could be argued that anything from merely noting views that are already a matter of public record to a meeting with representatives of relevant unions would meet the requirements.

The next point at which stakeholder involvement is required is when the municipality formally “decides to explore the possibility of providing a service through an external mechanism” (section 78 (3)).

In terms of this, the municipality must give notice

to the local community of its intention. Appropriate ways of doing this include taking a Council resolution and making it public through the municipal public affairs spokesperson, issuing a press release, placing an advertisement or including the news in any publication such as newsletters that the council may send to consumers.

At this point again, the views of organised labour must be taken into account.

Finally, once a decision has been taken to corporatise or undertake a form of public-private partnership to provide a basic municipal service, the municipality is obliged to “establish a mechanism and programme for community consultation and information dissemination regarding the service delivery agreement”. It also says that the contents of the service delivery agreement must be communicated to the local community through the media.

A communications plan must be drawn up to determine how best to do this. Depending on the internal public relations and communication resources of the municipality, it may decide to employ a communications consultant. In addition, the mechanism referred to could be a stakeholder forum representing local community interests.

The communications plan would use a mix of media mechanisms, including radio, local newspapers, press releases and advertisements, pamphlets and newsletters in all of the languages used within the community that will be affected by the service delivery agreement. Public meetings may also be held to inform communities about the impending changes.

It is important to note that the Act specifies consultation, which implies that the views of affected communities must be taken into account before finalising the service delivery agreement.

## The LRA and the National Framework Agreement

The LRA requires employers to consult with employees on matters relating to the workplace and changes in work practices.

The law is not specific however about the timing and scope of the consultation process which has the potential to create uncertainty until a legal precedent has been set clarifying this area.

In 1998 representatives of the SA Local Government Association (SALGA), the Congress of SA Trade Unions (Cosatu) and national government drew up a Framework Agreement for the restructuring of Municipal Service Provision. The National Framework Agreement, signed by SALGA and Cosatu emphasises the need to build the capacity of municipalities as the preferred providers of services and allows for the participation of the private sector in municipal service delivery when a municipality lacks the capacity to provide services on its own.

The agreement aims to guide the overall approach to local government restructuring and was drawn up after an impasse developed in the National Economic Development and Labour Council (Nedlac).

This agreement is an important recognition by all parties that if local government is to meet its development obligations, some restructuring will have to take place, as many municipalities do not function as effectively as they need to.

The framework places a lot of emphasis on the need to consult with both workers and residents about local government restructuring that will take place.

It recognises that the public and private sectors have different approaches to service delivery. While the private sector will be largely guided by the need to make a profit, the public sector is

guided by the obligation to meet social needs and is democratically accountable.

The framework sets out certain conditions that should be stuck to when the private sector is used to provide services. It states that private sector involvement should be mainly aimed at achieving improved and greater levels of service and leveraging additional capital and investment for greater effectiveness. Transparency is acknowledged as an important factor in decision-making around service delivery

and the framework suggests that regulations should be developed to ensure that "companies are not able to make unreasonable profits out of service provision".

The framework also says that regulatory measures applying to both private and public sector service providers should provide for lifeline and stepped tariffs to assist the poor.

The agreement is not legally binding on municipalities, but sets out a framework within which the signatories agree.

## Opposition from labour

South Africa's largest municipal workers trade union, the SA Municipal Workers Union (SAMWU) is clear on their opposition to various forms of municipal restructuring. SAMWU's main political campaign at the moment is to "fight privatisation of municipal services on all fronts". SAMWU has stated repeatedly that they see efforts to restructure municipal service delivery, including corporatisation as a first stage in the privatisation process, and therefore to be strongly resisted.

SAMWU has demonstrated its commitment to opposing municipal restructuring by launching a number of legal challenges, some of which have been successful.

Most recently an arbitration brought by SAMWU resulted in the suspension in May 2001 of an outsourcing arrangement entered into by the Sedibeng District Council.

SAMWU has also stated their intention to "use the fullest weight of the Municipal Systems Act to ensure that not only the union, but all community structures are included in the public participation

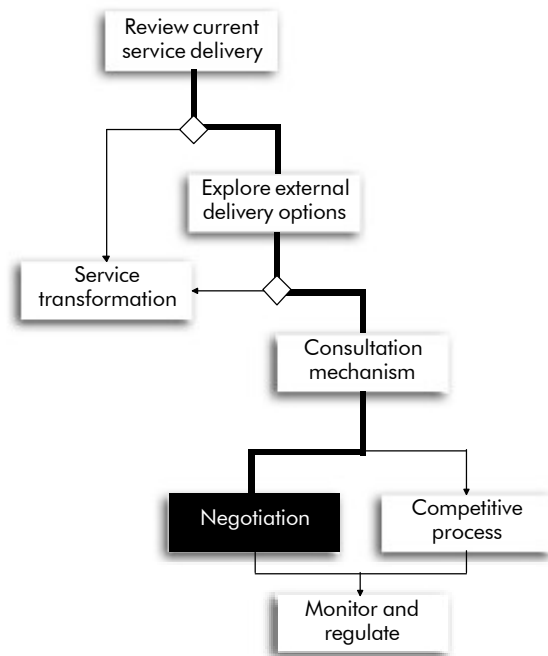
process that must follow in terms of the law".

The Independent Municipal and Allied Trade Union (IMATU), which represents large numbers of municipal staff says that the merits of each case of proposed restructuring must be weighed up as different conditions exist in different municipalities.

Prerequisites for their support for municipal restructuring include the protection of existing employees interests, inclusive consultation processes, partnerships with organised labour and a recognition that if employees are to be taken out of direct local authority service they should still be regarded as municipal employees in terms of the Labour Relations Act.

IMATU is prepared to support municipal service partnerships if these conditions are met. They site restructuring in Johannesburg and Stilfontein as examples of how "not to do it", while the Harrismith and Rand Water restructuring process is seen as a model they would support.

Source: SAMWU, 13 May 2001, [www.cosatu.org.za/samwu](http://www.cosatu.org.za/samwu); IMATU presentation to the Parliamentary workshop on restructuring, June 2001.



# STEP SIX

## Negotiate a service delivery agreement

### Financial considerations

When a municipality decides to create a water corporation it must make a number of decisions regarding what becomes part of the corporation and what stays behind with the municipality.

Often it is difficult to estimate the actual cost of providing water services as against other municipal expenditure as there is a lot of cross-subsidisation within a municipality. The cost of overheads (such as rent) is not allocated, the cost of depreciating capital assets is not clearly understood, the cost of capital is ignored and the costs of pension plans, legal fees, insurance and administration are underestimated.

Other factors may also add to cost. It is difficult to estimate the “cost of change”, but if there is wide-scale resistance to change within the organisation, considerable cost may be incurred changing these attitudes.

One of the aims of corporatisation is to better understand the costs and benefits associated with a particular service.

### The service delivery agreement

A wide-ranging service delivery agreement drawn up between the council and the water corporation regulates the relationship between the two entities. The Systems Act makes provision for the service delivery agreement to bind the service provider to undertake social and economic development related to the provision of the service and customer management. It may also pass on to the service provider or corporation, in a transparent way, funds to subsidise services to the poor.

The agreement can also make provision for staff transfer between the municipality and the corporation and for the agreement to be amended at a later stage if all parties agree to this.

There are also some things that a service delivery agreement cannot make provision for, such as allow-

ing councillors or staff to receive any benefits from a corporation that provides a municipal service.

In terms of section 80(2) of the Systems Act the service delivery agreement must be drawn up in partnership with the community. This specifically requires the municipality to establish a mechanism and programme for community consultation and information dissemination regarding the service delivery agreement, as described in the previous section.

### Performance goals and measures

The Service Delivery Agreement can also include a number of performance goals and measures. These could include directives to:

- Reduce or stabilise tariffs:  
Reduce operating costs by a certain amount per year; keep tariff increases to a certain amount; and achieve a certain percentage return on investment made.
- Generate surpluses:  
Generate a set amount of income for capital improvements by a certain date. This could be for capital improvements within the corporation or to cross subsidise another aspect of municipal capital expenditure.
- Deliver programs or projects:  
Implement capital projects by a set date; establish schedule costs and performance guarantees on capital projects; and provide performance incentives; and supplement staff by a set number during capital project implementation phase.
- Organisational development:  
Eliminate specified organisational barriers to performance improvement; improve customer service as measured by a customer survey; and reduce water leaks and costs by a certain percentage.



## Requirements of the draft Water Services Act regulations

The draft Water Services Act regulations also deal with a number of matters that should be included in the contract concluded between the Council and the water corporation, or the service delivery agreement.

While the regulations are still in draft they point to a number of factors for contractual consideration.

These include:

- Setting out the contract areas in which the water services are to be provided, and a procedure to change it;
- The conditions in which other service providers may use part of the water services works;
- Levels and standards of services to be provided;
- If levels and service standards vary for different geographic areas this needs to be specified with a capital development plan to reach target levels of service;
- Identifying which water services works form part of the contract;
- Obligations of the parties in obtaining a licence for water use under section 22(1) of the National Water Act (1998);
- Provision for periodic performance reviews;
- A process to renegotiate performance targets and indicators;
- Details of the municipality's obligations to the water corporation to enable it to meet its performance targets;
- Terms to prevent the water corporation from ceding its rights or responsibilities to another body without the permission of the municipality;
- Staff management in accordance with labour law;
- Duration of the contract (which the draft regulations say may not exceed 30 years);

- A procedure for early termination of the contract;
- Legal remedies if there is a breach of contract;
- Penalties for non-performance;
- Provision for information and data bases to remain the property of the council;
- Clauses dealing with assets including asset management and maintenance as well as procurement and disposal of assets;
- Payment for the water corporation by the municipality;
- Incentives for the corporation to perform efficiently and effectively;
- If the corporation is to deal directly with consumers, provision should be made for a consumer charter that provides a system for dealing with consumers complaints and sets out a consumer's right to redress;
- Procedures for consumer participation in drawing up the consumer charter should also be put in place;
- Provision for the corporation to provide the municipality with all information it requires to fulfil its reporting function to national and provincial government;
- Clauses requiring the corporation to maintain financial records in keeping with national government's required accounting practice;
- Maintenance of a data base of past and existing consumers;
- Provision for reasonable access to information by a consumer or potential customer;
- Publication of annual reports by the water corporation dealing with performance targets and indicators, details of any penalties levied by either party for non-performance, audited contract accounts and tariff rates and structures;
- A dispute resolution process; and
- Details of steps to be taken to prevent corruption.



**Councillor**

Now I must tell the residents in my ward how their views helped shape our final decision.



**Consumer**

We all helped to make the decision to create a new water company. Now more people will have clean water in our city.



**Municipal manager**

We've made a decision at last, now we have to design the implementation phase so don't expect me home for dinner.

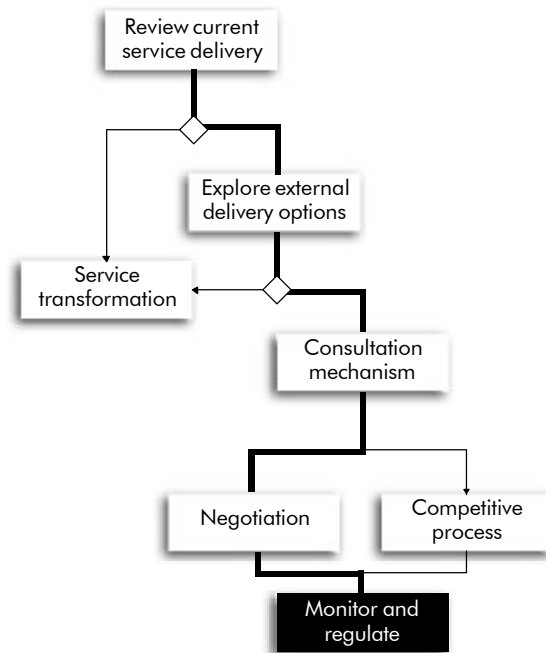


**Shopsteward**

Well, we still think the municipality could extend service delivery through internal restructuring, but our views were heard and the municipality has promised no retrenchments.

## SUMMARY TASKS FOR STEP SIX

- Draw up service delivery agreement and other legal agreements;
- Negotiate with stakeholders;
- Establish new corporatised water services utility.



# STEP SEVEN

## Monitor and regulate

Section 81 of the Municipal Systems Act makes it clear that once services are being carried out by a corporate entity or another service provider the responsibilities of the municipality do not simply end there.

Instead the municipality must continue to play an important regulating and monitoring role. It will have to:

- Regulate the provision of the service;
- Monitor the performance of the service provider and the implementation of the service delivery agreement;
- Set and adjust tariffs; and
- Ensure uninterrupted service delivery.

One of the most important factors for a municipality to consider is how it will fund this ongoing monitoring and regulatory activity. A dedicated source of revenue needs to be identified to enable municipalities to adequately play this role, thus safeguarding the interests of consumers.

### SUMMARY TASKS FOR STEP SEVEN

- Ongoing monitoring and regulation of the utility;
- Provide adequate resources for regulation.

# Glossary

**Corporatisation:** The creation of a separate, legal, 'corporatised' entity, owned and governed by one or more municipalities, with the explicit objective of providing water services to some or all of the municipality's water users. The corporatised entity may enter into a range of contracts with private or public partners to facilitate service delivery.

**Generic:** A general set of characteristics that do not relate to the specific.

**Juristic person:** A legal entity in its own right. A corporatised water service is a legal body or "person" in its own right, separate from the council that owns it.

**Municipal Service Partnerships:** This term has been used to encompass the range of alternate service delivery mechanisms that are presently being explored by

municipalities. These include public private partnerships, corporatisation, concessions, outsourcing and privatisation.

**Provincial competence:** Power(s) assigned to provincial government by the Constitution.

**Reticulation:** The distribution of water and the collection of wastewater through a complex network of pipelines and other infrastructure.

**Service Delivery Agreement:** A detailed document setting out the terms and agreements regulating the responsibilities of a water utility in relation to the Council that owns it.

**Stakeholders:** People or groups with an interest in or concern about something.

# Useful contacts

## **Municipal Infrastructure Investment Unit (MIIU)**

2<sup>nd</sup> Floor  
DBSA Building  
1258 Lever Road  
Midrand 1685  
1685  
Tel: (011) 313 3413  
Fax: (011) 313 3358  
[www.miiu.org.za](http://www.miiu.org.za)

## **SA Local Government Association (SALGA)**

P O Box 2094  
Pretoria 0001  
Telephone: (012) 338 6700  
Fax: (012) 323 7832

## **SA Municipal Workers Union (SAMWU)**

P Bag X9  
Athlone 7760  
Telephone: (021) 697 1151/2/3/4  
Fax: (021) 696 9175  
[www.cosatu.org.za/samwu](http://www.cosatu.org.za/samwu)

## **Independent Municipal and Allied Trade Union (IMATU)**

47 Selati Street  
Ashley Gardens  
Pretoria 0081  
Telephone: (012) 460 5692  
Fax: (012) 346 1157  
[www.imatu.org.za](http://www.imatu.org.za)

## **National Government Departments**

### **Dept of Provincial and Local Government**

Corner Hamilton and Proes Streets  
Arcadia  
Pretoria 0002  
Telephone: (012) 334 0600  
Fax: (012) 334 0603/4  
[www.local.gov.za](http://www.local.gov.za)

## **National Treasury**

40 Church Square  
Pretoria  
0002  
Telephone: (012) 315 5111  
Fax: (012) 323 3262.  
[www.treasury.gov.za](http://www.treasury.gov.za)

## **Department of Labour**

Laboria House  
215 Schoeman Street  
Pretoria  
0002  
Telephone: (012) 309 4000  
Fax: (012) 320 1942  
[www.labour.gov.za](http://www.labour.gov.za)

## **Department of Public Service and Administration**

Transvaal House  
Corner Vermeulen and van der Walt Streets  
Pretoria  
0002  
Telephone: (012) 314 7911  
Fax: (012) 323 2386/324 5616  
[www.dpsa.gov.za](http://www.dpsa.gov.za)

## **Department of Water Affairs and Forestry**

Sedibeng Building  
185 Schoeman Street  
Pretoria  
Telephone: (012) 338 7500  
Fax: (012) 326 2715  
[www.dwaf.pwv.gov.za/](http://www.dwaf.pwv.gov.za/)

# Useful resources

Water Research Commission: Corporatisation of Municipal Water Services Providers.

**Research Report K5/1141.** Prepared by: Palmer Development Group in association with the School of Government, University of the Western Cape.

American Water Works Association (AWWA). 1999. **Balanced Evaluation of Public/Private Partnerships.** AWWA Research Foundation. Version 1.1, CD-ROM.

Department of Constitutional Development. 1998. **The White Paper on Local Government. Local Government: Municipal Systems Act** (2000).

Department of Provincial and Local Government. 2000a. **White Paper on Municipal Service Partnerships.**

## **Water Services Act (1997)**

Department of Water Affairs and Forestry (DWAF). 2000a. **Introductory policy note regarding regulation of water service providers.**

Department of Water Affairs and Forestry (DWAF). 2000b. **Invitation to submit written comments on the proposed regulations dealing with contracts between water services authorities and water services providers in terms of sections 19(5) and 73(1)(h) of the Water Services Act, 1997 (Act no. 108 of 1997).**

World Bank. 1997a. **Toolkits for private sector participation in water and sanitation: Selecting an option for private sector participation.** Washington, DC.

World Bank. 1997b. **Toolkits for private sector participation in water and sanitation: Designing and implementing an option for private sector participation.** Washington, DC.

World Bank. 1997c. **Toolkits for private sector participation in water and sanitation: What a private sector participation arrangement should cover.** Washington, DC. Available at [www.worldbank.org](http://www.worldbank.org)

Note: All legislation can be found on Parliament's web site: [www.parliament.gov.za](http://www.parliament.gov.za)

# Appendix

## Finance legislation

### **Income Tax Act**

At present the pensions of municipal staff enjoy tax-free status in terms of the Income Tax Act. This impacts on staff transfer (and created a number of problems in the creation of the Johannesburg water utility). The white paper on municipal service partnerships suggests that this law should be amended to protect municipal pensions in the event of staff transfer.

### **Companies Act**

In the event of insolvency this act favours the liquidation of a company. This poses difficulties when the company is performing a public service, and requires agreement in advance on a method for replacing the service provider in the event of insolvency.

## Other relevant legislation

### **The Water Services Act (1997)**

The Water Services Act includes a range of provisions that overlap with the Municipal Systems Act.

Section 19 of the Act makes provision for municipalities (called water service authorities in this law) to enter into contracts with water service providers if it does not wish to perform the function itself. It also makes provision for the Minister of Water Affairs to regulate relations between a municipality and a water services provider and to set national standards regarding tariffs.

The Water Services Act also requires the council to pass a by-law regulating aspects of the relationship between a municipality and a service provider. The by-law should provide for service standards, tariffs, payment for services and the circumstances in which water supply must be provided or discontinued.

The municipality is also required to monitor the performance of the service provider and to prepare a water services development plan including details of water services providers, the contracts with these service providers and the details of capital and operating costs.

The act also empowers the Minister to intervene if a municipality does not perform effectively as a water services authority.

### **Provincial legislation**

Since many aspects of the governance of municipalities is a provincial competence, a number of provincial laws may also impact on the legislative environment in which corporatisation takes place. A scan of provincial legislation would also be required when embarking on a process of corporatisation.

In Gauteng, for instance, the Gauteng Rationalisation of Local Government Affairs Act (1998) makes reference to the powers of a municipal council to contract with public or private providers of goods or services.

### **Draft legislation**

Draft laws published in the form of a bill may also impact on the establishment of a water corporation once they have been passed by Parliament.

Impending legislation includes the Local Government: Municipal Finance Management Bill, which allows the national treasury to enforce transparency in the financial affairs of municipalities. It also requires treasury consent for the establishment by a municipality of a new municipal entity.