



SALGA

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MUNICIPAL
PUBLIC
ACCOUNTS
COMMITTEE
(MPAC)

Enhancing oversight in the Municipality

Practical Guide

TABLE OF CONTENT

ITEM	DESCRIPTION	PAGE NO.
1.	INTRODUCTION	3
2.	INTERNAL OVERSIGHT	4
2.1	Internal Audit Unit	4
2.2	Audit Committee	5
3.	EXECUTIVE OVERSIGHT	7
PART 1		
GUIDELINES FOR THE ESTABLISHMENT, APPOINTMENT AND GENERAL FUNCTIONING OF MPACS		
1.	Establishment of the MPAC	8
2.	Functions and terms of reference of the committee	8
3.	Delegation of functions to the MPAC	8
4.	The procedures and rules of order of the committee	8
5.	Appoint of the members of the MPAC	8
6.	Appointment of the chairperson of the MPAC	9
7.	Co-opting of advisory members to the MPAC	9
8.	Meetings of the MPAC should be open to the public	9
9.	Availability of resources for the MPAC	9
10.	Minutes and Agendas	10
11.	Meetings of the MPAC	10
12.	Reporting	10
PART 2		
TERMS OF REFERENCE FOR THE MPAC		10
PART 3		
DELEGATION OF THE MPAC		14
4.	CONCLUSION	15

ENHANCING OVERSIGHT IN MUNICIPALITIES

A PRACTICAL GUIDE

1. INTRODUCTION

One of the strategic objectives of the Local Government Turnaround Strategy is to build clean, effective, efficient, responsive and accountable local government. While governance systems and structures are operational in municipalities, its quality and effectiveness is sometimes questionable.

Oversight is a concept that refers primarily to the crucial role of legislatures in reviewing and monitoring the actions of the executive organs of government. The executive in carrying out its tasks, whether by implementing legislation or policy, acquires considerable power (the ability to influence or determine a person's conduct). A condition of the exercise of that power in a constitutional democracy is that the administration or executive is checked by being held accountable to an organ distinct from it (the legislature). This notion is inherent in the concept of the separation of powers, which simultaneously provides for checks and balances on the exercise of executive power, making the executive more accountable to an elected legislature.

While our Constitution gives expression to the principle of separation of powers by recognising the functional independence of the three branches of government (executive, legislature and judiciary), at local government level, however, a municipal council is vested with both legislative and executive authority. Subsequent legislation, in particular the Local Government: Municipal Finance Management Act, 2003, requires a certain level of oversight by the municipality over the executive authority. This entails amongst others, the annual report which includes the financial statements, the SDBIP, and also the performance of the municipal manager and other section 57 employees.

Since there is no neat distinction between the 'executive' and 'legislative' arms of council as it were, effective and proper oversight of the 'executive' at local level thus requires members of Council to fully understand the justifications and rationale behind accountable government and the purpose it serves. The oversight role is often seen as that of opposition parties alone, designed to police and expose maladministration and corruption. Such a view is limited and deficient. Oversight and accountability helps to ensure that the executive implements programmes and plans in a way consistent with policy, legislation and the dictates of the Constitution.

The Local Government: Municipal Structures Act, 1998, provides that a municipality, taking into account the extent of its functions and powers, the need for delegation and the resources available, may establish committees. Clearly, a municipality has substantial discretion on how to structure its committee system. Importantly, the manner in which a municipality uses that discretion can have consequences for the capacity of the council to hold the executive to account, which directly affects the quality of the governance in the municipality and ultimately the sustainability of such a municipality. The important role of committees in assisting the Council (section 79 committees) and Executive Committee or Executive Mayor (section 80 committees) to perform their functions effectively should thus be clearly understood and utilised for that purpose, so as to ensure good governance in the municipality.

Section 129 of the Municipal Finance Management Act requires a municipality to prepare an oversight report over the annual report and to publish the same. However, no further formal oversight requirements are contained in the legislation. Section 129(4) of the MFMA only provides for the issuance of guidance on the manner in which municipal councils should consider annual reports and conduct public hearings, and the functioning and composition of any public accounts or oversight committees established by the council to assist it to consider an annual report.

Section 79 of the Municipal Structures Act provides for committees of the Council reporting directly to the council, in accordance with the terms of reference of such committees are developed by the councils. Such committees, because of its direct reporting lines to the full council, are best suited to do oversight in the municipality, not only in terms of the oversight report referred to above, but general oversight over both the administrative and executive arms of the municipality.

It is against this background that SALGA, as well as National Treasury and DCOG, are promoting the establishment and effective functioning of Municipal Public Accounts Committees (MPACs). This guide is intended to supplement the guidelines on establishment of MPACs issued jointly by National Treasury and the Department of Cooperative Governance in August 2011, after consultation with SALGA. In particular it focuses on internal oversight as well as the establishment and effective functioning of MPACs, its terms of reference and delegations.

The document was approved by the SALGA NEC in March 2012.

2. INTERNAL OVERSIGHT

Internal oversight of the municipal administration is done by the internal Audit Division and the Audit Committee.

2.1 Internal Audit Unit

Section 165 of the Local Government: Municipal Finance Management Act, 2003, (hereinafter referred to as the MFMA) requires each municipality to have an internal audit unit. As the municipal manager is the accounting officer of the municipality, the internal audit unit is best situated in the office of the municipal manager. The internal audit unit must:

- 2.1.1 prepare a risk-based audit plan and an internal audit program for each financial year;
- 2.1.2 advise the accounting officer and report to the audit committee on the implementation of the internal audit plan and matters relating to
 - internal audit;
 - internal controls;
 - accounting procedures and practices;
 - risk and risk management;
 - performance management;
 - loss control; and
 - compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation; and
- 2.1.3 perform such other duties as may be assigned to it by the accounting officer.

The annual audit plan and internal audit program needs to be submitted to the municipal council for approval. As indicated, the internal audit unit reports to the audit committee on the implementation of its plan and program, but the audit committee only makes recommendations to the municipal council as there is no enforcement mechanism.

In addition to the statutory requirements set out above, internal audit should also ensure that the King III report as far as it relates to local government is implemented in the municipality. The actual implementation will be a cross cutting responsibility in the administration, but the implementation plan and monitoring thereof must rest with internal audit, as it is also interlinked with the internal controls, risk management as well as performance management.

2.2 **Audit Committee**

Section 166 of the MFMA requires each municipality to have an audit committee. The audit committee is an independent advisory body which must:

- 2.2.1 advise the municipal council, the political office-bearers, the accounting officer and the management staff of the municipality, or the board of directors, the accounting officer and the management staff of a municipal entity, on matters relating to
 - internal financial control and internal audits;
 - risk management;
 - accounting policies;
 - the adequacy, reliability and accuracy of financial reporting and information;
 - performance management;
 - effective governance;
 - compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation;
 - performance evaluation; and
 - any other issues referred to it by the municipality or municipal entity.
- 2.2.2 review the annual financial statements to provide the council of the municipality or, in the case of a municipal entity, the council of the parent municipality and the board of directors of the entity, with an authoritative and credible view of the financial position of the municipality or municipal entity, its efficiency and effectiveness and its overall level of compliance with the MFMA, the annual Division of Revenue Act and any other applicable legislation;
- 2.2.3 respond to the municipal council on any issues raised by the Auditor-General in the audit report;
- 2.2.4 carry out such investigations into the financial affairs of the municipality or municipal entity as the council of the municipality, or in the case of a municipal entity, the council of the parent municipality or the board of directors of the entity, may request; and
- 2.2.5 perform such other functions as may be prescribed.

The members of an audit committee are appointed by the municipal council of the municipality (in the case of a municipal entity, by the council of the parent municipality). It consists of at least three persons with appropriate experience, of whom the majority may not be in the employ of the municipality or municipal entity, as the case may be; and one of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No councillor may be a member of an audit committee.

The committee is a committee of the municipal council, as contemplated in section 79 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the Structures Act), but none of its members are councillors, contrary to the normal nature of a section 79 committee. The committee also advises and makes recommendations to the municipal council, but does not have any executive functions or enforcement powers.

However, the aforesaid does not detract from the requirement of the committee to specifically interrogate the following financial and governance aspects in the municipality:

- internal financial controls in the municipality;
- identification of strategic risks in the municipality;
- the establishment and updating of a municipal risk register;
- management and mitigation of risks contained in the risk register;
- accounting policies in the municipality;
- the frequency, accuracy and reliability of financial reporting by the municipality and where applicable, municipal entities;
- the performance management system of the municipality;
- the implementation and effectiveness of the performance management system;
- evaluation of the actual performance of the municipality;
- compliance with legislation;
- effective governance in the municipality;
- review of the annual financial statements;
- financial position of the municipality;
- the municipal response to the A-G report;
- loss control; and
- implementation of the King III principles.

The view of the audit committee on these matters provides the municipality with an objective and expert view which should guide the municipal council and executive. The development of strategies to address these aspects rests with the internal audit unit. The audit committee therefore casts an expert eye on the strategies developed by the internal audit section and the implementation thereof by the municipality as a whole.

3. EXECUTIVE OVERSIGHT

Municipal Public Accounts Committee (MPAC): Appointment and Legal Framework

Within the context of this guide, it refers to oversight of the ‘executive’ of the municipality by council structures. The MPAC is a committee of the municipal council, appointed in accordance with section 79 of the Structures Act. It is also important to note that in metros and large category B municipalities it is, due to the number of councillors, easier to appoint section 79 oversight committees to provide oversight over the functions of the section 80 committees. Many of the smaller municipalities do not have enough councillors to appoint such section 79 committees and can only appoint one oversight committee tasked with the complete oversight role, but focusing mainly on compliance with the provisions of the Local Government: Municipal Finance Management Act, 2003.

Nevertheless, municipalities are encouraged to establish MPACs as far as is possible and practical. As a section 79 committee, the following principles will apply:

- the municipal council must resolve to establish a MPAC by way of a council resolution;
- the municipal council must determine the functions of the committee and agree on the terms of reference for the committee;
- the municipal council must delegate functions to the MPAC in accordance with the terms of reference of the committee;
- the municipal council may determine the procedure of the committee or allow it to determine its own procedure;
- the municipal council appoints the members of the MPAC from amongst the councillors;
- section 160(8) of the Constitution applies to the committee and therefore its composition must be such that it allows parties and interests reflected within the Council to be fairly represented in the MPAC;
- the municipal council appoints the chairperson of the MPAC;
- the municipal council may dissolve the MPAC at any time;
- the municipal council may remove any member of the committee at any time;
- the municipal council may allow the MPAC to co-opt advisory members who are not members of the council, within the limits determined by the council;
- the meetings of the MPAC should, as far as is possible and practical, be open to the public in accordance with section 160(7) of the Constitution;
- the municipal administration must ensure that adequate financial and human resources are made available to support the functions of the MPAC;
- meetings of the MPAC should be provided for and included in the annual calendar of the council; and
- the MPAC reports directly to the municipal council and the chairperson of the MPAC liaise directly with the Speaker on the inclusion of reports of the MPAC in the council agenda.

What follows is a three-part guide to the establishment and effective functioning of MPACs, its terms of reference and delegations.

Part 1

Guidelines for the establishment, appointment and general functioning of MPACs:

1. Establishment of the MPAC

A report needs to be submitted to the municipal council that recommends the establishment of the MPAC. The report also needs to include all the aspects dealt with above, and which will be further unpacked below. The resolution passed by the municipal council must be clear on all powers and functions of the committee in order to prevent disputes in this regard. Disputes must be referred to the municipal council for resolution.

2. Functions and terms of reference of the committee

The main purpose of the MPAC is to exercise oversight over the executive functionaries of council and to ensure good governance in the municipality. This will include oversight over municipal entities. In order for the MPAC to fulfill this oversight role, it needs to be provided with the necessary information and documentation to interrogate the actions of the executive. Part 2 below provides generic terms of reference for the MPAC.

3. Delegation of functions to the MPAC

Functions must be formally delegated to the MPAC in accordance with the provisions of section 59 of the Local Government: Municipal Systems Act, 2000 (hereinafter referred to as the Systems Act). The delegations must be included as part of the System of Delegations of the Municipality. It should be noted that with regard to the delegations to the MPAC, the municipality should not allow for a review of the decisions of the MPAC by the Exco or Executive Mayor in accordance with section 59(3)(b) of the Systems Act, as the purpose of the MPAC is to do oversight of the executive. The delegations to the MPAC should specifically exclude the said powers to the executive of the municipality.

The requirement to report on the delegated authorities by the MPAC can be included as part of the quarterly report submitted to the council by the MPAC. The delegations required in this regard are further alluded to in Part 3 below.

4. The procedures and rules of order of the committee

Due to the nature of the committee, it is proposed that the municipal council determines the procedures of the committee with its establishment, provided that the committee may make recommendations to the council on possible amendments to be approved by the council once the activities of the MPAC commences. Such an arrangement will allow the MPAC to operate efficiently from its appointment and not having to spend time on the development of procedures.

5. Appoint of the members of the MPAC

There is no prescription on the number of members elected to serve on the MPAC committee. The municipality must determine the number of members that will be appointed, taking into account the number of councillors in the municipality and the fact that no office bearers/ executive councillors in the municipality may serve on the committee. It is ideal that the members be appointed for the term of the council, to ensure

continuity across financial years. However, this is subject to the right of the council to remove committee members by way of council resolution.

The National Treasury and DCOG guidelines propose maximum numbers of committee members but municipalities are not required to follow the guideline and a smaller number can also be appointed, provided that section 160(8) of the Constitution apply to the composition of the committee, which requires that the membership of the committee must be such that it allows parties and interests reflected within the Council to be fairly represented in the MPAC.

Once the number of MPAC members are agreed upon, the actual appointment can take place. The number of members as well as the names of the councillors appointed as members must be specified in the council resolution. The councillors appointed to the committee should have a wide range of experience and expertise in order to enable the committee to exercise its oversight function optimally.

6. Appointment of the chairperson of the MPAC

The chairperson of the MPAC must be appointed in terms of a council resolution. The chairperson may not be an office bearer/ executive councillor in the municipality. The chairperson of the MPAC should be an experienced councillor, due to the important role to be played by the MPAC in the council. The chairperson can be from the ruling or an opposition party, at the choice of the municipal council.

7. Co-opting of advisory members to the MPAC

The council must indicate whether it will allow the MPAC to co-opt advisory members, which are not councillors, but based on their expertise. This will be informed by the experience and capacity of members appointed to the MPAC. In the event where such co-option is allowed, the council has to prescribe the number of members that may be co-opted, the expertise required, the manner of co-option as well as the payment of a stipend to such co-opted members.

8. Meetings of the MPAC should be open to the public

Section 160(7) of the Constitution provides that a municipal council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted. As a principle, the meetings of the MPAC should be open to the public and the rules and procedures of the committee should specify in which instances the meeting can be closed to the public.

9. Availability of resources for the MPAC

The municipal administration must ensure that adequate financial and human resources are made available to support the functions of the MPAC. As the MPAC is a formal committee of the council, dedicated administrative as well as committee staff members must be made available to assist it in its functions. Formal agendas and minutes of meetings need to be prepared by committee staff under the guidance of the chairperson. Administrative staff should also assist committee members and the necessary infrastructure must be provided to the MPAC as well as all the finances required to fulfill its obligations.

10. Minutes and Agendas

Agendas of meetings need to be delivered to members in advance in order for them ample time to prepare for the meeting. Documents produced in the municipality that need to be submitted to the MPAC in terms of its terms of reference, must be submitted to the committee staff as soon as it is finalised in order to include it in the MPAC agenda for the next meeting.

11. Meetings of the MPAC

The MPAC needs to meet at least 4 times per annum, each such meeting to be held prior to the quarterly meeting of the municipal council (where applicable) or before the council meeting schedules for the month in which the MPAC meets, to allow ample time to include the report of the MPAC in the agenda for each council meeting. Meeting dates should be set and should be included in the annual calendar of meetings.

12 Reporting

The MPAC reports directly to the municipal council and the chairperson of the MPAC must liaise directly with the speaker on the inclusion of reports of the MPAC in the council agenda. As the MPAC is a committee of the council, its reports are submitted directly to the council without being submitted to the Exco or Mayoral Committee. The chairperson of the MPAC liaises directly with the speaker on the inclusion of its report in the council agenda, and the committee staff ensures that the documentation is physically included in the agenda of the council meeting.

Part 2

Terms of reference for the MPAC

1. The MPAC must interrogate the following financial aspects addressed in the Municipal Finance Management Act:

1.1 Unforeseen and unavoidable expenditure (Section 29)

- any unforeseen and unavoidable expenditure incurred must be reported to the MPAC;
- proof of the necessary appropriation in an adjustment budget;
- the MPAC must consider the expenditure and make recommendations to the council; and
- where the necessary adjustment budget has not been prepared, the MPAC must report same to the council.

1.2 Unauthorized, irregular or fruitless and wasteful expenditure (Section 32)

- any unauthorized, irregular or fruitless and wasteful expenditure by the council, the executive mayor / mayor, executive committee or any political office bearer of the municipality must also be reported to the MPAC;
- the municipal manager must report to the MPAC on all steps taken to either authorize or certify the payment or to recover or write off the expenditure;

- the municipal manager must report on whether any criminal action was instituted in this regard; and
- the MPAC must report to the council on the appropriateness of the any criminal or civil steps taken and report where no further action was taken and why.

1.3 **The quarterly report of the mayor on the implementation of the budget and the state of affairs of the municipality / SDBIP (Section 52(d))**

- a copy of the quarterly report of the mayor on the implementation of the budget and the state of affairs of the municipality must be submitted to the MPAC;
- where the report is not submitted to the MPAC within 30 days after the end of the quarter, the MPAC must report this to the council;
- where the report is submitted, it must be interrogated and recommendations must be made to the council;
- the MPAC must ensure that the mayor attend to the necessary amendments to the SDBIP and submit the necessary report to the council with proposals for the adjustment budget, and where this is not done by the mayor, report it to the council;
- the MPAC must report any matter of concern regarding the report of the mayor to the council.

1.4 **Monthly budget statements (Section 71)**

- the monthly budget statement submitted to the mayor must be submitted to the MPAC;
- the MPAC must interrogate the statement and report any matter of concern on the statement to the council.

1.5 **Mid-year budget and performance assessment (Section 72)**

- the mid-year budget and performance assessment report submitted to the mayor must be submitted to the MPAC;
- the MPAC must interrogate the assessment and submit its comments on the assessment to the council.

1.6 **Mid-year budget and performance assessment of municipal entities (Section 88)**

- the mid-year budget and performance assessment report submitted by the municipal entity needs to be submitted to the MPAC;
- the MPAC needs to interrogate the report and report matters of concern to the council;
- where the report has not been received or not published, it must be reported to the council.

1.7 **Disclosures concerning councillors, directors and officials (Section 124)**

- as part of its interrogation of the annual financial statements, the MPAC must ensure that the necessary disclosures were made in the financial statements, including:

- salaries, allowances and benefits of political office bearers and councilors of the municipality;
- arrears owed by individual councilors by the municipality for more than 90 days;
- salaries, allowances and benefits of the municipal manager, CFO and senior managers;
- salaries, allowances and benefits of the board of directors of municipal entities
- the salaries, allowances and benefits of the chief executive officer and senior managers of municipal entities;

1.8 **Submission and auditing of annual financial statements (Section 126)**

- copies of the financial statements submitted to the A-G must be submitted to the MPAC as well as the financial statements of any municipal entity under the control of the municipality as well as proof of submission thereof to the A-G;
- where the MPAC has not been provided with the financial statements or with proof that it has been submitted to the A-G it must be reported to the council.

1.9 **Submission of the annual report (Section 127)**

- the annual report must be submitted to the MPAC no later than two weeks after the date required for submission to the council;
- where the annual report is not submitted to the council as required, the MPAC must be provided with a copy of the written explanations of the mayor as submitted to the council;
- where neither the annual report nor the explanation has been submitted, the MPAC must report same to the council;
- the MPAC must monitor that the annual report has been submitted to the A-G, as well as the provincial government departments required and has been published for comment; and
- the MPAC must also monitor that all municipal entities have complied with the said requirements.

1.10 **Oversight report on the annual report (Section 129)**

- the MPAC must consider the annual report and prepare a draft oversight report to be submitted to the council for purposes of adopting the oversight report;
- in preparing the draft oversight report, the MPAC must consider all representations in connection with the annual report received from the local community;
- the meeting of the MPAC considering the annual report must be open to the public and members of the local community must be allowed to make representations in connection with the annual report at the meeting;
- National Treasury Circular 32 provides guidance on the preparation of the oversight report and a copy is attached as Annexure "A" hereto. Reference to the oversight committee must be read as the MPAC.

1.11 **Issues raised by the Auditor-General in audit reports (Section 131)**

- the MPAC must be provided with the report prepared to address issues raised by the A-G;
- where the report is submitted, MPAC should interrogate same and make recommendations to the

council; and

- where the report has not been submitted, MPAC should report this to the council.

1.12 **Audit Committee (Section 166)**

- the MPAC must ensure that the municipality at all times have an operational audit committee;
- all reports received from the audit committee need to be submitted to the MPAC to assist it in its functions and to capacitate the MPAC;
- where no audit committee has been appointed or where the audit committee is not operative, the MPAC must report this to the council.

1.13 **Disciplinary action instituted in terms of the MFMA**

- all disciplinary processes instituted for the contravention of the MFMA must be reported to the MPAC;
- MPAC must monitor that all matters are brought to conclusion;
- MPAC must report to council where matters are not dealt with effectively and timeously.

2. The MPAC must interrogate the following aspects addressed in the Municipal Systems Act.

2.1 **Review of the IDP post elections (Section 25)**

- MPAC must monitor whether the Executive mayor / Exco initiate the review of the IDP posts elections;
- Where the review is not done, the MPAC must report same to the council.

2.2 **Annual review of the IDP (Section 34)**

- MPAC must monitor whether the Executive mayor / Exco initiate the annual review of the IDP;
- Where the review is not done, the MPAC must report same to the council.

2.3 **Performance management plan (Section 39)**

- MPAC must monitor whether the annual performance plan is being prepared;
- Where the plan is not prepared, the MPAC must report same to the council.

2.4 **Monitoring that the annual budget is informed by the IDP (Regulation 6 of the Local Government: Municipal Planning and Performance Management Regulations)**

- MPAC must review the draft annual budget and ensure that it is informed by the IDP adopted by the municipal council; but
- Where the draft annual budget is not aligned with the IDP, the MPAC must report same to the municipal council.

2.5 Monitoring that all declaration of interest forms are completed by councillors on an annual basis (Section 54 read with Item 7 of Schedule 1)

- MPAC must monitor whether all councillors have completed their declaration of interest forms and update it annually;
 - Where declaration of interest forms have not be completed or updated same must be reported to the municipal council.
3. The MPAC must prepare an annual work plan for approval by the municipal council prior to start of the financial year.

PART 3

Delegations to the MPAC

The following responsibilities are to be delegated to the MPAC in terms of the provisions of section 59 of the Systems Act:

1. The authority to interrogate the following documents and to make recommendations to the municipal council in accordance with the terms of reference of the committee:
 - 1.1 Unforeseen and unavoidable expenditure;
 - 1.2 Unauthorised, irregular or fruitless and wasteful expenditure;
 - 1.3 SDBIP;
 - 1.4 Monthly budget statements;
 - 1.5 Mid-year budget and performance assessment;
 - 1.6 Mid-year budget and performance assessment of municipal entities;
 - 1.7 Disclosures concerning councillors, directors and officials;
 - 1.8 Annual financial statements;
 - 1.9 Annual report;
 - 1.10 Issues raised by the A-G in the audit reports;
 - 1.11 The appointment of the audit committee;
 - 1.12 Disciplinary steps instituted in terms of the MFMA;
 - 1.13 The review of the IDP post elections;
 - 1.14 The annual review of the IDP;
 - 1.15 Performance management plan;
 - 1.16 The draft annual budget with reference to the approved IDP; and
 - 1.17 Declaration of interest forms submitted by councillors.
- 2 The authority to consider all presentations made by the community on the annual report and the authority to have interviews with members of the community to obtain input on the annual report, as

well as the authority to prepare the draft oversight report over the annual report.

3. The authority to instruct any member of the executive or the municipal manager to attend the meeting of the MPAC to address matters specified by the MPAC and to provide the MPAC with copies of documents to be dealt with by the committee in terms of its terms of reference.
4. The authority to instruct any member of the board or the CEO of a municipal entity to attend the meeting of the MPAC to address matters specified by the MPAC and to provide the MPAC with copies of documents to be dealt with by the committee in terms of its terms of reference.
5. The authority to obtain legal, technical and other specialised assistance required to exercise its functions and duties within the budget approved for the committee and subject to the supply chain management policy where applicable.

4. CONCLUSION

The functionality of the internal governance arrangements in a municipality is to a large extent determined by the effectiveness of its committee system and oversight in the municipality. Accountability and oversight can be most effective if recognised by those in power as promoting accountability and good governance, which in turn are there to enhance performance, effectiveness and efficiency of service delivery. Seen in this light the oversight function complements rather than hampers the effective delivery of services, which is the ultimate aim.

The establishment and effectiveness of MPACs is thus critical for this purpose. Municipalities must ensure that members of oversight committees are continually empowered with the necessary skills, knowledge and information needed to execute the oversight function effectively so as to enhance good governance and ultimately the performance of the municipality, in accordance with the constitutional vision of local government being a developmentally orientated sphere. SALGA will undertake continuous training and coordinate information-sharing sessions periodically for the benefit of our members.