

7.6.2

**SECTION 78 PROCESS FOR AN EXTERNAL  
SERVICE DELIVERY MECHANISM WITH  
REGARD TO PUBLIC TRANSPORT**

**APPENDIX 2**



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## **SERVICE DELIVERY MECHANISMS OF LOCAL GOVERNMENT**

**Utilising the Provincial Sustainable  
Transport Program (PSTP)**



## THIS PRESENTATION:

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- ✿ Distinguishing the service authority and the service provider roles
- ✿ The process for determining an appropriate service delivery mechanism
- ✿ Internal mechanisms
- ✿ External mechanisms



## SERVICE AUTHORITY FUNCTIONS AND SERVICE PROVIDER FUNCTIONS

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## SERVICE AUTHORITY FUNCTIONS

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### Service Authority

A service authority is responsible for “administering” a function. This responsibility should be distinguished from regulation and service provision. For example, municipalities are service authorities for water. The Department of Water Affairs and Forestry functions as a regulator. The service provider could be the municipality but it need not be – as in the case of Mbombela Municipality or the City of Johannesburg. Hence: “A municipality has ... the *right to administer*—the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5” (Section 156 of the Constitution).



## WHAT DO SERVICE AUTHORITIES DO?

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- ✿ Based on legislation, policy and practice in SA, acting as an authority usually implies the following responsibilities:
  - ▶ Adopting an IDP – planning to ensure that the function is effectively administered
  - ▶ Setting Tariffs or Rates – determination of user fees or the imposition of taxes to pay for the provision of the service;
  - ▶ Receipt of Funds and debt control;
  - ▶ Policy – priority setting;
  - ▶ Enacting supply-related legislation (for example, Transport By-Laws);
  - ▶ Performance monitoring of service provision;
  - ▶ Ownership of assets.



## SERVICE PROVIDER FUNCTIONS

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### Service Provider

A service provider is responsible for providing “municipal services” – a term that has recently been defined in the Systems Act and broadly correlates to municipal functions that involve service provision. The service provider can be the municipality itself (if the provision is **internal**) or another entity (if the provision is **external**). The basis for the service provision is established by the Service Authority who remains ultimately responsible for the provision of the service. **Chapter 8 of the Systems Act** deals with service provision in detail.



## SUMMARY OF RESPONSIBILITIES

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### Authority

- ✿ Ensuring access / universal service obligation
- ✿ Planning
- ✿ Regulation
- ✿ Provision
- ✿ Services to industry
- ✿ Regional schemes
- ✿ Duty to provide information

### Provider

- ✿ Duty to provide water services
- ✿ Effectiveness and efficiency
- ✿ Consumer charter
- ✿ Consumer relations
- ✿ Consumer friendly billing
- ✿ Business plan
- ✿ Duty to provide information



## SEPERATION OF REGULATORY AND OPERATIONAL RESPONSIBILITY

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- Service Authority = Regulatory authority  
= Supervisory responsibility
  - Service Provider = Implementing authority  
= Operational responsibility
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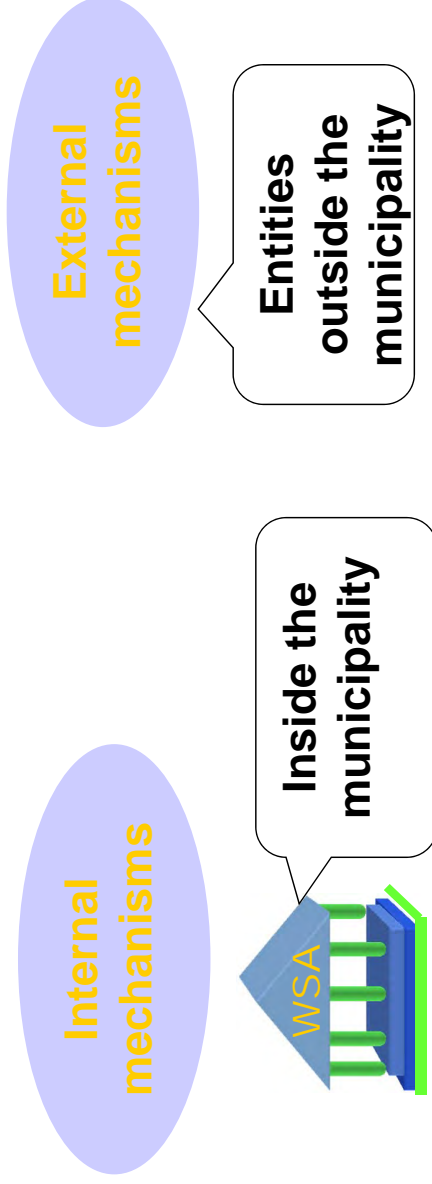


## THE PROCESS FOR DETERMINING AN APPROPRIATE SERVICE DELIVERY MECHANISM

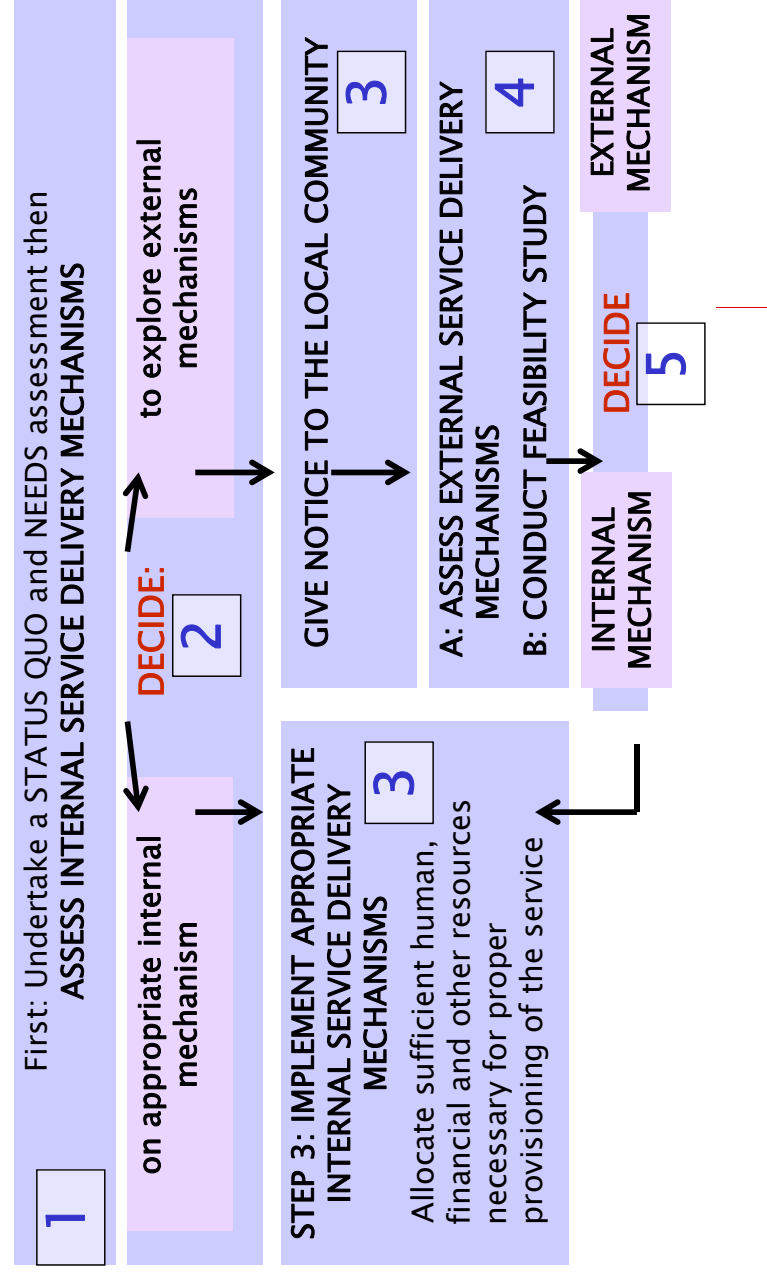


## CHOOSING A SERVICE DELIVERY MECHANISM

- Municipal Systems Act dictates when a service authority must consider service delivery mechanisms – section 78 assessment
- Internal and external service delivery mechanism possible

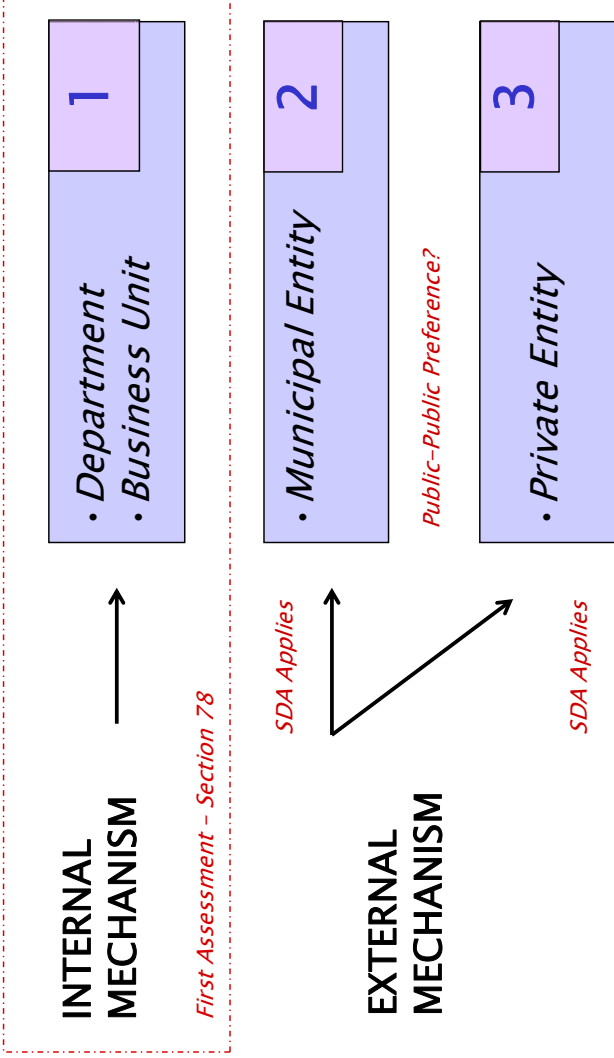


## THE SECTION 78 PROCESS





# THREE BROAD SERVICE PROVISION OPTIONS



# INTERNAL MECHANISMS



## THINGS TO THINK ABOUT WHEN CONSIDERING INTERNAL MECHANISMS

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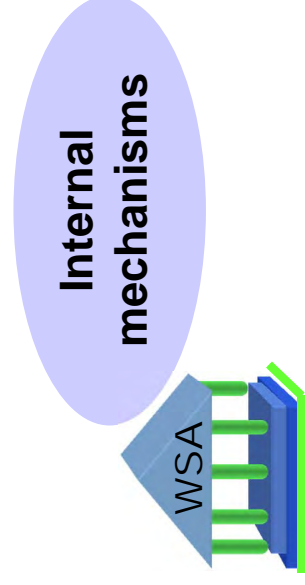
- Internal delivery mechanisms are more about appropriate organisational design and performance improvement than financial considerations
- Effective and efficient administration will, however, improve financial performance
- A department can reflect many of the characteristics of a business unit and vice versa depending on the way it is governed and structured



## WHAT ARE THE INTERNAL MECHANISMS?

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- A Department or Administrative Unit within the municipality's administration
- Business Unit
- Any other component of the municipality's administration







## WHAT IS A DEPARTMENT OR ADMINISTRATIVE UNIT?

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- ✿ The Systems Act doesn't provide definitions
- ✿ Can be defined as *“an institutional arrangement where the responsibility for the delivery of a particular service is carried by more than one unit within the administration of a municipality”*
- ✿ Currently it's the most common option
- ✿ The department or administrative unit usually takes responsibility for the technical aspects of the service, while other departments or administrative units take responsibility for other aspects of the service such as financial, legal, social, human resources and the like



## WHAT IS A BUSINESS UNIT?

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- ✿ A business unit –
  - ❑ operates within the municipality's administration
  - ❑ under council's control, and
  - ❑ in accordance with operational and performance criteria of Council
- ✿ The Act does not define a 'business unit'
- ✿ There is no clear legal or academic definition
- ✿ **Can** be defined as *“a ring-fenced unit within the municipal structure operating within a defined framework and fully accountable for all aspects of service delivery”*

## WHAT IS A BUSINESS UNIT?

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- ✿ Similar to a department or administrative unit as it is an integral part of a municipality and does not have a separate legal personality
- ✿ Functions as if it is separate from the municipality
- ✿ Usually is responsible for all aspects of a service, including the technical, financial and legal aspects
- ✿ All income and expenditure is ring-fenced and all functions (including meter reading, billing and credit control) related to the provision of water services may be performed by the business unit
- ✿ Transactions with other departments 'at arms length'
- ✿ The business unit focuses on water services provision and constitutes a holistic approach to rendering the service

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## EXTERNAL MECHANISMS

## EXTERNAL MECHANISMS IN THE CONTEXT OF S78

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- ✿ Challenges / needs have been identified (although not a legislative requirement, a status quo assessment should have been completed and needs going forward determined)
- ✿ Internal mechanism assessment completed, and decision to first assess feasibility of external mechanisms
- ✿ Notice to the community of intention explore external mechanisms has been given

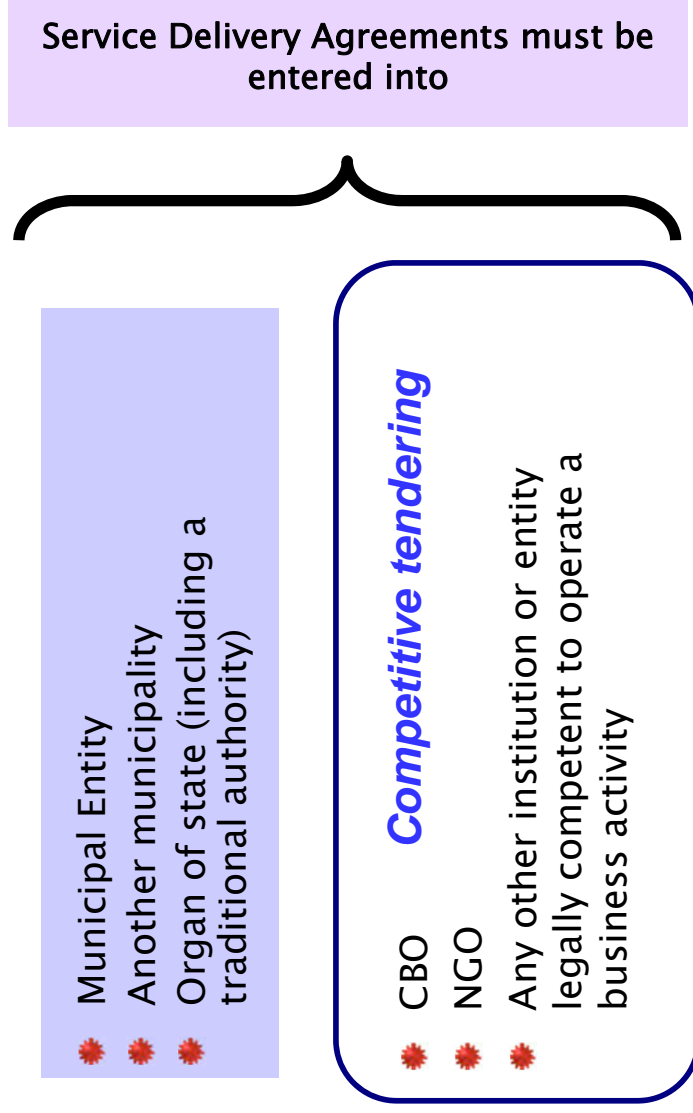
## DIFFERENCE BETWEEN INTERNAL AND EXTERNAL ASSESSMENTS :

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- ✿ Community Consultation
- ✿ Feasibility Study
- ✿ Regulator involvement
- ✿ Deal with issues required in a Service Delivery Agreement to be concluded if an external mechanism is chosen

## THE EXTERNAL MECHANISM OPTIONS

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## STEPS WITHIN THE EXTERNAL MECHANISM PROCESS :

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- ASSESS legislated external mechanism options against your needs
- Get VIEWS of community and organised labour on assessment
- Conduct FEASIBILITY STUDY of preferred option to show it is affordable and there is benefit in pursuing the option

## WHILE DOING THE ASSESSMENT CONSIDER:

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- ✿ Output specifications (what is it that you want the service provider to do?)
- ✿ Risk Transfer (financial/operational/political/etc)
- ✿ Contract Structure
- ✿ Structure of relationship with service provider
- ✿ Term of contract (relative to risk transfer)
- ✿ Legislated criteria



## THE FEASIBILITY STUDY:

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- ✿ After assessing options, choose the preferred option, and test the feasibility of this option against the optimal internal mechanism
- ✿ Feasibility Study will include:
  - ▶ Developing a financial model
  - ▶ Assessing pros and cons of option
  - ▶ Testing the outcomes against each other
  - ▶ Testing sensitivity of assumptions
  - ▶ Addressing legislated criteria



## PUBLIC–PUBLIC PREFERENCE?

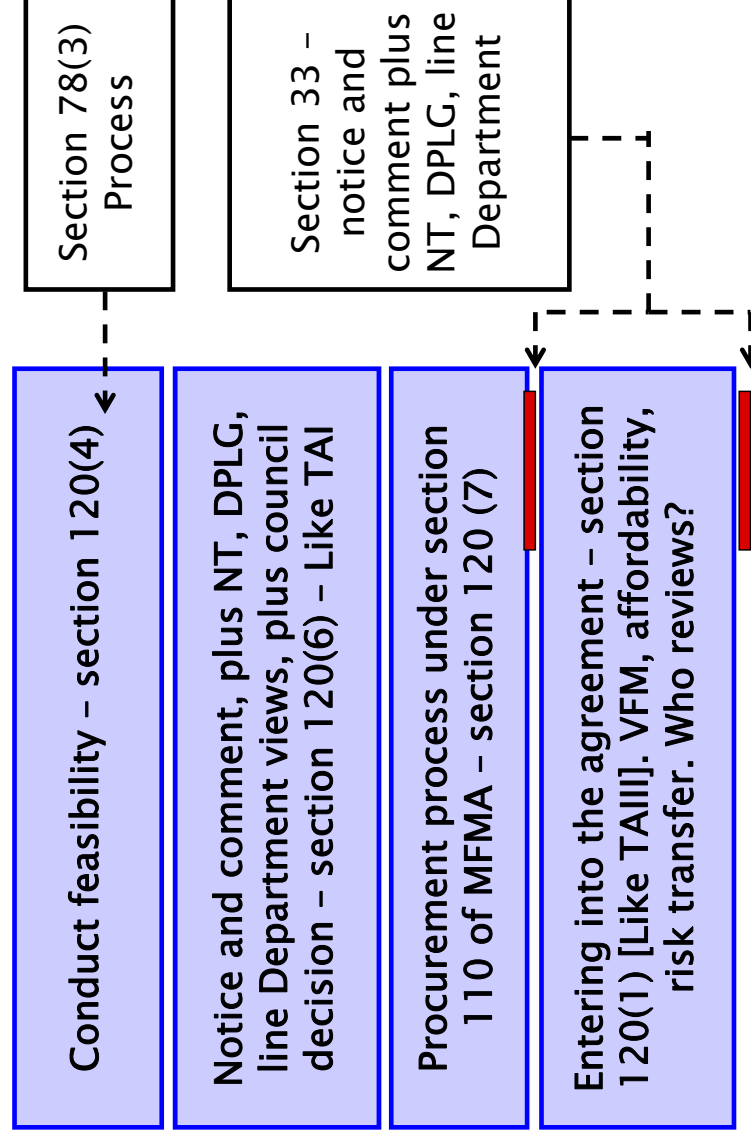
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- ✿ Procurement
  - ▶ The exemption is a mixed blessing – it saves *initial* costs but reduces municipal bargaining power (*ultimate* costs?)
- ✿ Partnership with Water Boards
  - ▶ PFMA compliance and strict National Treasury supervision – eg Emfuleni’s transaction with Rand Water.
- ✿ Water Services Act
  - ▶ Section 19 Preference is probably not meaningful – eg of Joburg Water.



## PUBLIC PRIVATE PARTNERSHIP: WHAT DOES 120 OF THE MFMA REQUIRE?

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## PROCUREMENT OF SERVICE PROVIDERS

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- ✿ Key risks:
  - ▶ Interaction with bidders;
  - ▶ Assessments of compliance;
  - ▶ Interaction between technical advisors and adjudicators;
  - ▶ Reasons for decision;
  - ▶ Change of scope or price during the negotiating phase.



## THE SERVICE DELIVERY AGREEMENT (“SDA”)

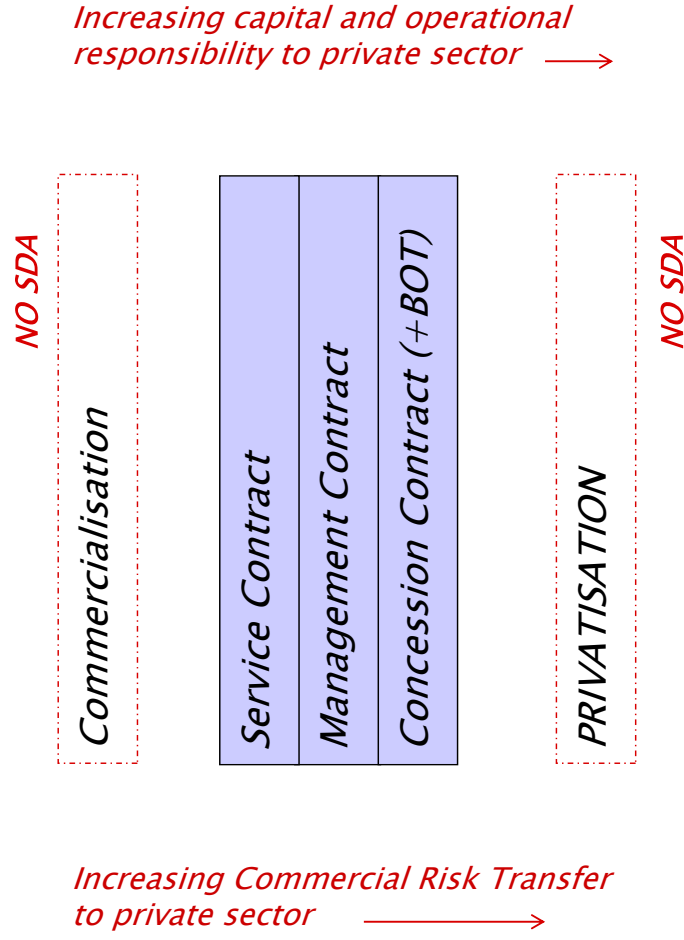
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- ✿ Key difference between the internal and external mechanism is the SDA.
- ✿ An SDA is the agreement which regulates the relationship between the WSA and the WSP. It sets out who has to what and when.
- ✿ There are “generic types” of SDAs, but each WSA should make sure its contract is appropriate for its specific needs, allocates risks and adequately allows the WSA to “ensure service deliver”



## CONTEXT: KINDS OF SDAS

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## WHICH SDA FOR YOU?

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- ✿ The type of output specification (what it is the Municipality wants to achieve through the service delivery mechanism) and the risk transfer will influence WHO (which external mechanism) is appropriate to respond to your needs
- ✿ Let the communities needs drive the assessment of external mechanisms, rather than the other way around!
- ✿ Review s 81 of the Systems Act







## CORPORATISE OR NOT?

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### CORPORATISE

#### Cost-benefit Analysis:

- Nature of the service  
“*business practices*”?
  - Need for close **policy control**
  - Quality of *status quo* – deficits?
  - **Failure** to discharge resp?
  - Need for **capital**
  - **Special** objectives
- #### Management and Finance
- ME’s capacity to **borrow**.
  - Funding from other Government spheres
  - Internal management expertise
  - Section 79(a) –allocate to internal