

THE KERALA LOCAL AUTHORITIES LOANS ACT, 1963

(Act 30 of 1963)

CONTENTS

Preamble.

Sections.

1. Short title, extent and commencement.
2. Definitions.
3. Borrowing powers of local authorities.
- 3A. Constitution of the Development Fund, financial management and services etc., by Government.
4. Remedy by attachment if loan not repaid.
5. Power of local authority to guarantee payment of interest on, or to create a fund for repayment of capital expended on any work to which the funds may be applied.
6. Remedy by attachment if engagements not fulfilled.
7. Issue of short term bills.
8. Power of Government to make rules.
9. Loans not to be effected except under this Act.
10. Repeal.

ACT 30 OF 1963

THE KERALA LOCAL AUTHORITIES LOANS ACT, 1963*

An Act to unify and amend the laws relating to the borrowing powers of local authorities in the State of Kerala.

Preamble.—WHEREAS it is expedient to unify and amend the laws relating to the borrowing powers of local authorities in the State of Kerala;

BE it enacted in the Fourteenth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*— (1) This Act may be called the Kerala Local Authorities Loans Act, 1963.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*— In this Act, unless the context otherwise requires,—

¹[(a) “accrual period” means a financial year beginning on and from the 1st day of April and ending with the 31st day of March of the following year or part thereof ending with 31st March;

(b) “Board” means the Board of Management appointed under sub-section (2) of section 3A;

(c) “Development Fund” means the Kerala Local Government Development Fund constituted under sub-section (1) of section 3A and includes the aggregate of the contribution by the Government, investments, loans and all other properties];

²[(d)] “funds” used with reference to any local authority includes any local, panchayat or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose and any property vested in such authority;

³[(e) “Fund Manager” means the asset management company to be constituted as specified in sub-section (4) of section 3A;

* Received the assent of the Governor on the 10th day of October, 1963 and published in the Kerala Gazette Extraordinary No.108 dated 11th October, 1963.

1. Inserted by Act 11 of 2012 (w.e.f 30-01-2010).

2. Renumbered by Act 11 of 2012 (w.e.f 30-01-2010).

3. Inserted by Act 11 of 2012(w.e.f 30-01-2010).

(f) “fund period” means the period on and from the date of constitution of the Development Fund to the date of its revocation or transfer to the Consolidated Fund of the State under the provisions of section 3A;

(g) “Government” means the Government of Kerala;

(h) “infrastructure projects” includes water supply, solid waste management, sanitation, storm water drains, roads, transportation systems, sites and services, area development and other remunerative and non-remunerative infrastructure projects for public use;

(i) “investment” means money lent or to be lent by the Development Fund only for infrastructure projects and includes money placed by the Development Fund in instruments such as Government promissory notes or other Government securities, stock or share in any banking company or other public company, or stocks, funds, shares, debenture, debenture stock, commercial papers, financial papers, short term or long term corporate deposits, securitised debt, mortgage, bonds, obligations and securities of any description whatsoever;

(j) “lender” means any person who has given money to the Development Fund by way of loan];

¹[(k)] ²“local authority” means any person legally entitled to the control or management of any local fund or legally entitled to impose any cess, rate, duty, fee or tax and includes the Panchayat or the Council of the Municipality, as the case may be, and also includes the Secretary of such local authority if he has been specifically authorised by the local authority for discharging the duties and functions under this Act.

Explanation.—A person means and includes any authority or body corporate.]

³[(l) “management agreement” means the management agreement between the Fund Manager and the Board;

(m) “net income” means in relation to any accrual period, the net income earned by the Development Fund as shown in its audited statements of account for that accrual period, net of all costs, taxes and expenses, Fund Manager’s remuneration and interest paid or payable on the borrowing by the Development Fund;]

1. Renumbered by Act 11 of 2012 (w.e.f 30-01-2010).

2. Substituted by Act 16 of 2000 (w.e.f 12-05-2000).

3. Inserted by Act 11 of 2012(w.e.f 30-01-2010).

¹[(n)] “prescribed” means prescribed by rules made under this Act;

²[(o)] “State” means the State of Kerala;]

³[(p)] “work” includes a survey whether incidental to any other work or not.

3. *Borrowing powers of local authorities.*—(1) A local authority may, subject to the prescribed conditions, borrow money from the Government or with the previous sanction of the Government from any other person, on the security of its funds or any portion thereof, for any of the following purposes, namely:—

(i) the carrying out of any work which it is legally authorised to carry out;

(ii) the giving of relief and the establishment and maintenance of relief works in times of famine, scarcity, epidemic or flood;

(iii) the prevention of the outbreak or spread of any dangerous epidemic disease;

(iv) any measures which may be connected with or ancillary to any purposes specified in clauses (ii) and (iii);

(v) the repayment of money previously borrowed in accordance with law:

Provided that no portion of the money so borrowed shall be applied to any purpose other than that for which it was borrowed.

(vi) any other purpose which the Government may specify.

(2) (a) The time for the repayment of any money borrowed under this section shall in no case exceed sixty years.

(b) The time for the repayment of any money borrowed before the commencement of this Act shall not, except with the express sanction of the Government, extend beyond the period of sixty years.

(c) The time for the repayment of any money borrowed for the purpose of discharging any previous loan shall not, except with the express sanction of the Government, extend beyond the unexpired portion of the period for which such previous loan was raised.

1. Renumbered by Act 11 of 2012 (w.e.f 30-01-2010).

2. Inserted by Act 11 of 2012 (w.e.f 30-01-2010).

3. Renumbered by Act 11 of 2012 (w.e.f 30-01-2010).

¹[(3) The borrowing powers of a local authority shall be fixed by the Government in relation to the annual income of that local authority:

Provided that nothing in this section shall affect the issuance of Revenue Bonds by the local authority by pledging the revenue stream from the project ringfenced by escrow accounts and credit enhancements.]

²[3A. *Constitution of the Development Fund, financial management and services etc., by Government.*— (1) Save as otherwise provided in section 3, the Government may, by notification in the Gazette, with effect from such date as may be notified, constitute a Fund, namely, the Kerala Local Government Development Fund, for the objectives set forth hereunder, namely:—

(a) to establish viable and sustainable financing arrangements which enable creation, upgradation and maintenance of cost effective and quality civic infrastructure in the State;

(b) to mobilise resources for the infrastructure project using various financing instruments and financial structures such as bonds or debentures, equity, pooled finance arrangements etc.;

(c) to borrow or raise money or loans or receive grants or accept contributions in such manner and on such terms, conditions and securities as the Board may deem fit from time to time;

(d) to provide financial assistance in the form of loans, grants or a contribution thereof to local authorities for taking up and implementation of infrastructure projects which create enduring community assets and improve living standards of the population in their areas and to provide loans or equity in the infrastructure projects sponsored by the local authorities in association with non-government agencies when the infrastructure projects are considered strategically important:

Provided that the investment shall comply with all laws regulating the environment and social protection;

(e) to establish grant funds and provide grants from its own resources and to manage grant funds as the Government may direct from time to time in terms of such grants so as to ensure continuous upgradation of standards or organisational, financial and technical capacities of local authorities and to set up viable and

1. Inserted by Act 16 of 2000 (w.e.f 12-05-2000).

2. Inserted by Act 11 of 2012 (w.e.f 30-01-2010).

substantial infrastructure projects for the betterment of the poor and disadvantaged sections of the society;

(f) to enable the local authorities to access capital markets, financial institutions and private investors for setting up infrastructure projects in the State either individually or through such arrangements like pooled financing guarantees or securitisation;

(g) to guarantee the performance of any contract or obligations and the payment for any bond issue or mobilisation of resources by the local authorities;

(h) to assist the local authorities in getting the participation of non-government sector in creation and maintenance of civic infrastructure through joint ventures and other innovative partnerships;

(i) to subscribe for, underwrite, acquire, hold and dispose of shares, stocks, debentures, debenture stocks, bonds, mortgage, obligations, securities of any kind issued or guaranteed by any company whether it is a body corporate or undertaking in whatever nature and any industry, or the Government or trust or any local authority;

(j) to invest any money of the Development Fund, in any investments as may be prudent and as may be necessary, provided the income from such investments shall be utilised to fulfill the objectives of the Development Fund;

(k) to act as nodal or nominated agencies on behalf of the Central and/ or the State Governments for infrastructure projects in the State;

(l) to do all other things necessary and conducive to the attainment of all these objectives.

(2) (a) The Government may, by notification in the Gazette, appoint it Board of Management to manage the Development Fund established under this Act with the following members, namely:—

- (i) The Minister-in-charge of the Urban Affairs—*ex-officio*;
- (ii) The Minister-in-charge of Panchayats—*ex-officio*;
- (iii) The Secretary to Government, Finance Department—*ex-officio*;
- (iv) The Principal Secretary, Local Self Government Department—*ex-officio*;

(v) The Secretary to Government, Local Self Government(Urban) Department—*ex-officio*;

(vi) The Secretary to Government, Planning Department—*ex-officio*;

(vii) The Director of Urban Affairs—*ex-officio*;

(viii) One Mayor of a Municipal Corporation, one Chairman of a Municipality and one President of a Panchayat each to be nominated by the Government.

(b) The Minister-in-charge of the Urban Affairs shall be the Chairman of the Board and the Secretary to Government, Local Self Government (Urban) Department shall be its Convenor.

(c) The Board shall stand possessed of the Development Fund subject to the powers and provisions herein contained concerning the same and the Board shall have the power at any time during the existence of the Development Fund to accept any property whether of an onerous nature or not from any person or persons from any other fund or otherwise with the intention of holding the same by or on behalf of the Board as an accretion to the Development Fund.

(3)The Board shall perform the following functions and duties, namely:—

(a) to provide financial assistance in relation to infrastructure projects and also lay down policies relating to credit approval and investments, provided if no infrastructure project has been identified for making investments, the Board may invest the Development Fund, in such manner as it deems fit in the interest of the Local authorities;

(b) to enter into a management agreement whereby the Board shall delegate such of its powers as it deems appropriate to the Fund Manager to enable the Fund Manager to manage the Development Fund, and to realise the objectives set forth in the Act;

(c) to supervise operations of the Fund Manager in relation to the Development Fund;

(d) to exercise at all times due diligence in carrying out its duties for protecting the interests of the Development Fund;

(e) to hold the Development Fund on behalf of the Government for enabling opening and operating of Bank accounts on behalf of the Fund by the Fund Manager;

(f) to accept additional contribution if any made by the Government and the local authorities towards the Development Fund;

(g) to exercise the power at any time by a resolution, revocable or irrevocable during the existence of the Development Fund to release or to any extent restrict the future exercise of any powers hereby or by law conferred on it notwithstanding the fiduciary nature of any such powers;

(h) to exercise the power, discretion, rights and immunities as may be prescribed.

(4) The Fund Manager shall be an Asset Management Company to be constituted by the Government under the Companies Act, 1956 with the following persons in the Board of Directors, namely:—

(a) Nominees of the Government and reputed non-Government institutions such as Banks and Financial Institutions, Management Institutions etc., provided the shares of Government in the equity of the Fund Manager is not less than 51% and the respective shares of other participants together constitute the rest of the shareholding in the Fund Manager;

(b) The number of nominees of the Government and other participants in the equity holding of the Fund Manager shall be proportionate to their shareholding;

(c) The nominees of the Government shall be the *ex-officio* Secretary to Government, Local Self Government (Urban) Department who shall be designated as Chairman of the Company, the Secretary to Government (Finance), and the Secretary to Government (Planning).

(5) The net income of the Development Fund possessed by the Board shall accrue for the sole benefit of the Development Fund and the entire income of the said Fund shall accrue to the Government for investment.

(6) A member of the Board shall hold office till he holds an official position in the Government or Local authorities, as the case may be, or until the termination of the Development Fund or the discharge of the member, whichever is earlier.

(7) The Government may, by notification in the Gazette, reconstitute the Board at any time.

(8) The Board shall have the power to make such reserves out of the income or capital as the Board deems proper for expenses, taxes and other liabilities

of the Development Fund, to pay from income or from capital or to apportion between income and capital any expenses of making or changing investments and of selling, exchanging including brokers commissions and charges and generally to determine what part of the expenses of the Development Fund shall be charged to capital and what part to income and to determine as between separate funds and separate parts or shares the allocation of income, gains, profits, losses and distribution and any decisions of the Board whether made in writing or implied from its acts shall so far as the law may permit be conclusive and binding on the Government.

(9) Unless agreed to by the Government, the Board shall not remove the Fund Manager, or make any material amendments to the Management Agreement except for minor amendments thereto; or have the right to approve the withdrawal or resignation of the Fund Manager as provided for in the Management Agreement.

(10) The Board may, from time to time, delegate to any committee or any other person any of its powers and duties provided the Board shall remain liable for any such delegate's acts of commission or omission to the extent the Board itself would have been liable for such acts and if found necessary the Board may, from time to time, authorise any of the members to act on its behalf and sign documents.

(11) The Board may in the discharge of its duties, act upon any advice obtained from any bankers, accountants, brokers, lawyers or consultants, professionals or experts acting as advisers to the Board. The Board shall not be bound to supervise the action of such advisers or verify the advice or information received from them and the Board shall not be liable for anything bona fide done or omitted to be done or suffered in reliance upon such advice or information nor be responsible for any loss occasioned by so acting nor for the consequences of any bona fide mistake, oversight or error of judgment on the part of such advisers.

(12) The Board may charge the Fund with the following expenses, namely:—

(a) All expenses properly incurred in the operation of the Development Fund and for the realisation, preservation or benefit of the investments and assets comprising the Development Fund and for its protection.

(b) All expenses (including expenses incidental to execution and for registration of any agreement or other deeds) incurred by the Board for obtaining contributions from Government and loans or raising any form of resources.

(c) All expenses in connection with any legal proceedings by or against the Development Fund or concerning the affairs of the Development Fund including professional fees and costs of any legal advice.

(d) All legal and statutory expenses incurred in the operation of the Fund including all levies, duties and other charges paid or payable in connection with the issue of shares, units, debentures, bonds or any other form of financial instruments.

(e) All expenses in connection with the holding of its meetings and the fees of the Fund Manager as per the management agreement.

(13) The liabilities of the Board shall be limited to the following extent, namely:—

(a) The Board shall not be liable on account of anything done in good faith, bona fide and with due diligence.

(b) The Board shall only be chargeable for such money, stocks, funds and securities as the Board shall have actually received and shall not be liable or responsible for any banker, broker, custodian or other person in whose hands the same may be deposited or placed nor otherwise for any involuntary loss.

(c) The Board and every attorney or agent appointed by the Board shall be entitled to be indemnified by the Development Fund in respect of all liabilities, losses and expenses incurred or any of the powers, authorities and discretion vested in or delegated to them other than those arising out of gross negligence or wilful misconduct, provided however that, such indemnity shall not in any event exceed the amount of the Fund.

(14) The members of the Board shall not be entitled to any remuneration for their services.

(15) The Board may provide a seal for the purpose of the Development Fund and the seal shall be affixed to such documents and instruments as the Board may direct from time to time.

(16) The Board shall incur all expenses in connection with the creation of the Development Fund from the Development Fund itself.

(17) The Development Fund is revocable only by an amendment to this Act and at the time of revocation of the Development Fund, all the assets and liabilities shall be transferred to the Government in such manner as may be prescribed.

(18) (a) The Board shall maintain proper books of accounts, documents and other records with respect to the Development Fund.

(b) The Board shall forward to the Government the following:

(i) unaudited financial statements of the Development Fund within three months of the conclusion of the respective accrual period of the Development Fund;

(ii) annual reports including audited financial statements of the Development Fund within six months of the conclusion of the respective accrual period of the Development Fund; and

(iii) quarterly reports within one month of the end of each quarter providing unaudited summary financial information regarding the operations of the Development Fund.

(c) The accounts of the Development Fund shall be audited every year in such manner as may be prescribed.

(d) The audited accounts of the Development Fund together with the audit report thereon shall be forwarded annually to the Government.

(e) The Government shall cause the accounts together with the audit report thereon forwarded to them to be placed before the Legislative Assembly every year.]

4. *Remedy by attachment if loan not repaid.*— If any money borrowed in accordance with the provisions of this Act, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Government if itself the lender, may, and if the Government is not the lender shall on the application of the lender attach the funds on the security of which the loan was made. After such attachment, no person, except an officer appointed in this behalf by the Government, shall in any way deal with the attached funds, but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place and may apply the proceeds in satisfaction of the loan and of all interests and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of the liability in respect of which such attachment is made.

5. *Power of local authority to guarantee payment of interest on, or to create a fund for repayment of capital expended on any work to which the funds may be applied.*—The Government may authorise any local authority either severally or in conjunction with any other local authority, to charge its funds or any part thereof by way of guarantee for the payment of interest on, or by the creation of a fund for the repayment of, money expended or to be expended on any work or for any of the purposes to which such funds might be by law applied.

6. *Remedy by attachment if engagements not fulfilled.*— In the event of default being made by a local authority in the fulfilment of engagements entered into under the last preceding section, the Government may on the application of a person entitled under such engagements, attach the funds made subject to charge on account thereof. After such attachment, no person, except an officer appointed in this behalf by the Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the local authority might have done if such attachment had not taken place, and may apply the proceeds to the discharge of the liabilities incurred and in payment of all costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings consequent thereon:

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability in respect of which such attachment is made.

7. *Issue of short term bills.*— (1) Subject to the provisions of section 31 of the Reserve Bank of India Act, 1934, any local authority to which the Government may by notification in the Gazette extend the provisions of this section, may, with the previous sanction of the Government, borrow money by means of the issue of bills or promissory notes payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under the provisions of this Act.

(2) The Government may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this section.

8. *Power of Government to make rules.*— (1) The Government may, by notification in the Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide as to:—

(i) the nature of the funds on the security of which money may be borrowed or interest guaranteed;

(ii) the works for which money may be borrowed or for the carrying out of which the payment of interest may be guaranteed;

(iii) the manner of making applications for permission to borrow money;

(iv) the manner of making application for sanction to give guarantee under section 5;

(v) the inquiries to be made in relation to such application and the manner of conducting such inquiries;

(vi) the inquiries to be made in relation to loans and the manner of conducting such inquiries;

(vii) the inspection of any works carried out under any contract in respect of which the payment of interest is guaranteed under this Act;

(viii) the accounts to be kept by the person or corporate body with whom such contract is made and for the inspection of the same;

(ix) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(x) the cases in which and the conditions subject to which the Government may make loans;

(xi) the cases in which and the conditions subject to which local authorities may take loans from persons other than the Government;

(xii) the manner of recording and enforcing the conditions on which money is to be borrowed;

(xiii) the manner and the time of making or raising loans;

(xiv) the inspection of any works carried out by means of loans;

(xv) the instalments, if any, by which loans shall be repaid, the interest to be charged on loans and the manner and the time of repaying loans and of paying the interest thereon;

(xvi) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;

(xvii) the attachment of such funds and the manner of disposing of or collecting them;

(xviii) the accounts to be kept in respect of loans;

(xix) the utilisation of unexpended balances of loans either in the reduction in any way of the debt of the local authority, or in carrying out any works which that authority is legally authorised to carry out, and the sanction necessary to such utilisation.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

9. *Loans not to be effected except under this Act.*— Except as provided by or under this Act, no local authority shall, for any purpose, borrow money upon or otherwise charge, its funds, and any contract otherwise made for that purpose after the passing of this Act shall be void:

Provided that nothing herein contained shall be deemed—

(a) To preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force; or

(b) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

10. *Repeal.*— The Local Authorities Loans Act, 1914 (Central Act 9 of 1914), and the Madras Local Authorities Loans Act, 1888 (Madras Act 1 of 1888) as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) and the Travancore-Cochin Local Authorities Loans Act, 1951 (Act IX of 1951), are hereby repealed.